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A

TREATISE

ON THE

ROMAN SENATE.

In TWO PARTS.

The FIRST PART contains

The ſubſtance of ſeveral letters, formerly written to the late Lord HERVEY, concerning the manner of creating SENATORS, and filling up the vacancies of that body in OLD ROME.

The SECOND PART, which is now added, contains a diſtinct account

I. Of the power and juriſdiction of the SENATE.
II. Of the right and manner of convoking it.
III. Of the places, in which it was uſually aſſembled.
IV. Of the legal times of holding their aſſemblies.
V. Of the different ranks and orders of men in the SENATE, and of the forms obſerved in their deliberations.
VI. Of the nature and force of their decrees.
VII. Of the peculiar dignity, honors and ornaments of a ROMAN SENATOR.

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A

TREATISE

ON THE

ROMAN SENATE.

PART the FIRST.

THE late Lord *Hervey*, who had long honored me with very diſtinguiſhing marks of his friendſhip, took occaſion in one of his letters, about twelve years ago, to aſk my opinion, on two or three points, relating to Claſſical antiquity, and eſpecially, *on the manner of creating Senators, and filling up the vacancies of the Senate in Old Rome*; on which M. *Vertot*'s anſwer to the ſame queſtion, when it was propoſed to him by the late Earl *Stanhope*, had not given him ſatisfaction.

In compliance therefore with his Lordſhip's requeſt, I preſently ſent him my thoughts on the other points, above

intimated; and, in a ſeparate letter, endeavoured to explane the ſtate of the *Roman* Senate, from that time, in which the Commons of *Rome* firſt opened their way to the public honors of the city, till the final oppreſſion of their liberty, which I obſerved to be the period, to which Earl *Stanhope*'s queſtion was particularly referred.

But my ſhort account of the matter, did not anſwer the purpoſe of Lord *Hervey*'s inquiry, nor ſolve the particular difficulties, which ſeemed to him to perplex it. He reſolved therefore, to take the pains of ſearching into it himſelf, and of tracing out the origin, and progreſs of the Senate, from its firſt inſtitution by *Romulus*, down to the reign of *Auguſtus*: the reſult of which was, that his opinion at laſt happened to differ from mine, which he explaned with great eloquence, and enforced with great learning, drawn from the principal writers on the *Roman* affairs, both *Greek* and *Latin*.

Here then was a controverſy, unexpectedly ſtarted between us, and ſeveral letters exchanged upon it. And I could heartily wiſh, that all controverſies of the ſame kind, were carried on with the ſame ſpirit. For tho' each of us eſpouſed a different hypotheſis, from which neither at laſt ſeemed willing to depart, yet this adherence to our ſeveral opinions, gave not the leaſt ſhock to our friendſhip, but rendered it more agreeable ſtill on both ſides, as being grounded on that ingenuous freedom and indulgence to each other's way of thinking, without which, no friendſhip can either be valuable or laſting.

As the ſubject of theſe papers has not been profeſſedly treated, by any of the Ancients; nor, in my opinion, ſufficiently explaned, by any of the Moderns, ſo I flatter myſelf, that the publication of what I had collected upon it, in the defence of my hypotheſis, may be of ſome little uſe or

entertainment to the curious: as it exhibits a more diſtinct idea, than will eaſily be found elſewhere, of the genius of the *Roman* government in general, as well as a more preciſe illuſtration of the conſtitution of the *Roman* Senate; which may be called, *the ſoul or vital principal* of that mighty republic, [*a*] and what gave birth and motion, to all thoſe celebrated acts, which were ſucceſſively produced in it.

In anſwer therefore to the queſtion abovementioned, concerning *the right and manner of creating Senators*, and filling up the vacancies of that body, I ſent my Lord *Hervey* the following letter.

MY LORD, April 1, 1735.

I WISH, that it were in my power to give your Lordſhip any ſatisfaction, on this or any other occaſion, where you can poſſibly want it; which as I en-

[*a*] Ἐοικέναι τε τῷ καθ' ἕνα τὸ κοινὸν ἔφη· ψυχῆς μὲν γὰρ ἀνδρὸς ἀναλογον ἐχέσης τὸ τῆς βουλῆς; σώματος δὲ, τὸ τοῦ δήμου. Dionyſ. Hal. 5. 67. Edit. Oxon.

deavoured

deavoured in my laſt letter, upon a queſtion of a different kind, ſo I ſhall attempt again in this, on the ſubject of the Roman Senate, where I fancy myſelf perhaps more capable, as well as the argument more worthy of your Lordſhip's inquiry.--I am aſhamed to confeſs, that when I received the honor of your Lordſhip's, I had not read M. *Vertot*'s anſwer to Earl *Stanhope:* but I have ſince procured it, in order to ſee diſtinctly, what it was, that could remain ſtill obſcure to you, in a queſtion, which had been treated by ſo able a maſter, and which of itſelf had appeared always to me to be ſufficiently clear. I ſhall not trouble your Lordſhip with my particular exceptions to the account of that learned Antiquary, but give you only in ſhort, my own ſentiments on the ſame ſubject, drawn, as I imagine, from evident and authentic teſtimonies of the ancient writers.

From the time, that the Plebeians had opened themſelves a way to the

firſt honors of the ſtate, the conſtant and regular ſupply of the Senate was from the annual magiſtrates; who by virtue of their ſeveral offices acquired an immediate right to ſit and vote in that aſſembly. The uſual gradation of theſe offices, was that of *Quæſtor*, *Tribune of the people*, *Ædile*, *Prætor*, *and Conſul*; which every candidate, in the ordinary forms of the conſtitution, was obliged to take in their order, with this exception only, that he might forego either the Tribunate or the Ædileſhip at his own choice, without a neceſſity of paſſing through them both. The Quæſtorſhip was called the firſt ſtep of honor; and the Quæſtors, who were generally employed in the provinces abroad, aſſigned to them ſeverally by lot, no ſooner returned from their provincial adminiſtration, than they took their places in the Senate, and from that time forward, from the rank of Equeſtrians, or what we commonly call Knights, became Senators for life. All

All theſe magiſtrates were elected by the people in their public aſſemblies, promiſcuouſly and indifferently from the whole body of the citizens; which explanes what *Cicero* frequently declares in different parts of his works, " That the ſenatorian dignity " was conferred by the ſuffrage and " judgement of the whole Roman peo- " ple; and that an acceſs to the ſu- " preme council of the republic was " laid open to the virtue and induſtry " of every private citizen [*a*].

But though theſe offices gave both an immediate right and actual entrance into the Senate, yet the ſena-

[*a*] Qui cum regum poteſtatem non tuliſſent, ita magiſtratus annuos creaverunt, ut concilium Senatus reip. proponerent ſempiternum; deligerentur autem in id conſilium ab univerſo populo, adituſque in illum ſummum ordinem omnium civium induſtriæ ac virtuti pateret. Cic. pr. Sext. 65.

Si populum Romanum, cujus honoribus in ampliſſimo conſilio collocati ſumus. Poſt. red. in Sen. 1.

In eo loco, in quo me honores populi Romani collocaverunt. Pr. Dom. 31.

Cujus beneficio in hunc ordinem venimus. In Verr. 4. 11.

torian character was not eſteemed complete, till the new Senators had been enrolled by the Cenſors, at the next *Luſtrum*, or general review of all the orders of the city, which was generally held every five years. Yet this enrollment was but a matter of form, which could not be denied to any of them, except for ſome legal incapacity, or the notoriety of ſome crime, or infamy upon their characters; for which, the ſame Cenſors could expel or deprive any other Senator, of what rank or ſtanding ſoever. It was one part likewiſe of the cenſorian juriſdiction, to fill up the vacancies of the Senate, upon any remarkable deficiency in their number, with new members from the equeſtrian order, who had not yet born any magiſtracy: but this was not done arbitrarily, or without the conſent and approbation of the people. For by obſerving the manner of proceeding on ſome extraordinary occaſions, we may collect the

legal

legal and regular method in ordinary caſes. For example, after the battle of *Cannæ*, the Senate being greatly exhauſted, and no cenſors in office, a Dictator was created for the ſingle purpoſe of filling up the vacancies: who preſently aſcended the Roſtra, and in the preſence of the people, aſſembled in the Forum, ordered all thoſe, who remained alive of the laſt cenſorian liſt, to be firſt called, and enrolled anew; then thoſe, who ſince that time had born a curule magiſtracy, but had not been enrolled, each according to the order of his creation; then thoſe, who had been *Ædiles*, *Tribunes of the people*, or *Quæſtors*; and laſtly, thoſe of the equeſtrian rank, who had born no magiſtracy at all, but had ſignalized themſelves in the war, and taken ſpoils from the enemy: and having thus added one hundred and ſeventy ſeven new ſenators to the laſt roll, with the univerſal approbation of the people, he laid down his office,

office [*b*]. Upon another occaſion likewiſe, when *Sylla*, the dictator, after the deſtruction made by his civil wars and proſcriptions, found it neceſſary to fill up the exhauſted ſenate with three hundred Knights, he gave the choice of them to the people in an aſſembly of their tribes [*c*].

The power of the Cenſors, being naturally odious and unpopular, was generally exerciſed with temper and caution, unleſs when an extraordinary licence and corruption of the times ſeemed to demand a particular ſeverity and enforcement of diſcipline. The cenſures however of theſe magiſtrates were not perpetual or irreverſible, nor conſidered as bars to any future advancement: for what was inflicted by one Cenſor, was ſometimes reverſed by the other; and what was done by them both, by an appeal to the people; or by the ſucceeding Cen-

[*a*] Liv. l. 23. 23.
[*b*] App. de Bell. civ. l. 1. p. 413.

ſors;

ſors; who commonly reſtored the diſgraced party to his former dignity; or elſe by obtaining, a ſecond time, any of the magiſtracies abovementioned, the perſon ſo diſgraced entered again into the Senate, and was enrolled of courſe by the next Cenſors. Thus we find ſome, who had ſuffered the cenſorian note of infamy, choſen Cenſors afterwards themſelves [*d*]; and *C. Antonius*, who was *Cicero*'s collegue in the conſulſhip, had been expelled the ſenate for his vices, about ſix years before; and *Lentulus* alſo,

[*d*] Ponam illud unum: C. Getam, cum a L. Metello & Cn. Domitio cenſoribus e ſenatu ejectus eſſet, cenſorem ipſum poſtea eſſe factum——Quos autem L. Gellius & Cn. Lentulus, duo cenſores, furti & captarum pecuniarum notaverunt, ii non modo in ſenatum redierunt, ſed etiam illarum ipſarum rerum judiciis abſoluti ſunt. Cic. pro Cluent. 42.

Cenſores denique ipſi ſæpenumero ſuperiorum cenſorum judiciis—non ſteterunt. atque etiam ipſi inter ſe cenſores ſua judicia tanti eſſe arbitrantur, ut alter alterius judicium non modo reprehendat, ſed etiam reſcindat. ut alter de ſenatu movere velit, alter retineat.—Ibid. 43. Vide etiam Val. Max. l. 2. 9. 9.

who

who was expelled even after he had been conſul, was reſtored to the Senate by obtaining the prætorſhip a ſecond time after that diſgrace; in which office he was put to death by *Cicero*, for conſpiring with *Catiline* againſt the public liberty [*e*].

Thus, as it is evident from unqueſtionable authorities, the legal and ordinary ſource, by which the vacancies of the Senate were ſupplied, was from the annual magiſtrates, choſen by the people: a method of ſupply, of all others the beſt adapted to ſupport the dignity, as well as to fill up the number of that auguſt body; which could never be remarkably deficient, but by the uncommon accidents of war, or peſtilence, or proſcriptions of the nobility: on which occaſions,

[*e*] Hunc Antonium ſexennio, quo hæc dicerentur, Gellius & Lentulus cenſores ſenatu moverunt; cauſamque ſubſcripſerunt, quod judicium recuſarit, quod propter æris alieni magnitudinem prædia manciparit, bonaque ſua in poteſtate non haberet. Aſc. Pæd. in Orat. in Tog. Cand. Vid. it. Dio. l. 37. p. 43. D. Vell. Pat. 2. 34.

thoſe deficiencies were ſupplied, either by the extraordinary power of a Dictator, created for that purpoſe, or the ordinary power of the Cenſors, confirmed by the approbation of the people. M. *Vertot* ſeems to perplex the queſtion; firſt, by conſidering the authority of the people, and that of the Cenſors, as oppoſite and inconſiſtent with each other in the creation of Senators, whereas they were both of them jointly neceſſary, to make the act complete: ſecondly, by aſſerting the cenſorian power to be the original and principal in that affair, whereas it was but ſecondary or miniſterial, to the ſovereign prerogative of the people.

ABOUT a month after the date of this letter, his Lordſhip ſent me his own opinion on the ſame ſubject, drawn out at length, in the form of a diſſertation; which he ſupported afterwards,

afterwards, and farther explaned by a ſecond; and finally defended by a third.

As ſoon as I had received the firſt of them, I immediately ſat down to conſider the argument again more preciſely: and agreeably to the method obſerved by his Lordſhip, endeavoured to ſketch out the legal and genuine ſtate of the Roman Senate, through all the ſeveral periods, in which it had ſuffered any remarkable alteration, under the Kings, the Conſuls, and the Cenſors: in purſuance of which deſign, as faſt as I filled up my papers to the proper ſize of a letter, I tranſmitted them to his Lordſhip at different times and in different packets: all which I have now thought proper, for the ſake of brevity and perſpicuity, to connect into one continued letter, in the very words of the originals, as far as they could be recovered from the imperfect notes, which I had taken of them, or at leaſt,

leaſt, in an exact conformity to that ſenſe, in which they were firſt written.

MY LORD,

WHEN your Lordſhip required my thoughts *on the manner of filling up the Roman Senate*, I gave them in the ſimplicity of my heart, the beſt, that occurred to me, on a ſubject, for which I was not then particularly prepared. I fancied, that I could dictate to your Lordſhip, as M. *Vertot* to Earl *Stanhope*, and recollecting, that I was writing to a court, thought it a part of good breeding, to keep clear of Greek and Latin. But your Lordſhip has fairly caught me, and, in your elaborate diſſertation, given me a pattern, how I ought to have written on a queſtion of learning, or at leaſt, how to my Lord *Hervey*.

In my former letter, I choſe to begin my account of the Senate, from that time, when its power and glory were at their height, and it's hiſtory, the moſt worthy of our notice; when

it

it was free in it's deliberations, and open in it's acceſs, to the virtue of every citizen. But ſince your Lordſhip has thought fit to recur to it's very origin, and to trace out its progreſs through every period of it's duration, I think myſelf obliged to purſue the ſame method, and explane my thoughts on it's original conſtitution and legal manner of ſupply, from the very foundation of *Rome*, to the oppreſſion of it's liberty. But in order to place the ſubject of our debate in it's true light, it will be neceſſary, to ſtate preciſely the different opinions, which we ſeverally entertain about it.

Your Lordſhip's notion then is, "that "under the Kings of *Rome*, the choice "and nomination of all the Senators "depended wholly on the will of the "Prince, without any right in the peo-"ple, either direct or indirect: that "the Conſuls, who ſucceded to the "kingly power, enjoyed the ſame pre-

"rogative

" rogative, till the creation of the Cen-
" ſors; who ever after poſſeſſed the
" ſole and abſolute right of making
" and unmaking Senators."

My opinion on the contrary is, " that
" the Kings, the Conſuls, and the Cen-
" ſors acted in this affair, but miniſte-
" rially and ſubordinately to the ſu-
" preme will of the people; in whom
" the proper and abſolute power of
" creating Senators always reſided."
I ſhall procede therefore, in the me-
thod above propoſed, to examine, what
evidence of facts, or grounds of proba-
bility can be found in favor of my
hypotheſis, through all the ſeveral pe-
riods of the Roman hiſtory.

I muſt confeſs in the firſt place,
that, as far as our argument is con-
cerned with the regal government of
Rome, your Lordſhip has the Latin
writers on your ſide, who conſtantly
ſpeak of the creation of Senators, as a
branch of the royal prerogative. But
in computing the proper force of this

evidence, we muſt remember, that none of thoſe writers treat the queſtion profeſſedly, but touch it only incidentally; and that it is natural to all, upon the ſlight and occaſional mention of an event, to aſcribe it to the principal agent, concerned in it's production; ſo as to impute the acts of popular aſſemblies to the Prince or ruling Magiſtrate, who convened and preſided in them, and had the chief influence perhaps in determining the tranſactions themſelves. Thus when *Livy* tells us, *that the Præfect of the city created the firſt Conſuls*; *and that Brutus, one of theſe Conſuls, created P. Valerius, his Collegue in that office*; or that the *Interrex on other occaſions created the Conſuls*, or *that the Pontifex Maximus was ordered by the Senate to create the firſt Tribuns* [*f*], he means nothing more, than that thoſe Magiſtrates called

[*f*] Duo Conſules inde, comitiis centuriatis, a Præfecto Urbis, ex commentariis Servii Tullii, creati ſunt. Liv. l. 1. 60.

Brutus

called the people together, in order to make ſuch creations, in which they aſſiſted and preſided [*g*]. And as this is the uſual ſtile of all writers, ſo it is peculiarly of thoſe, who write the hiſtory of their own country, and for the information of their own people; who have not the patience, to treat minutely of things, which they ſuppoſe to be known to their readers, as well as to themſelves: and hence it ſometimes happens, that the origin of cuſtoms and conſtitutions of the greateſt importance are left dark and obſcure, not onely to ſtrangers, but even to the natives of later ages.

The caſe however is different, with *Dionyſius* of *Halicarnaſſus*; who profeſſes to write for the inſtruction of

Brutus Collegam ſibi comitiis centuriatis creavit P. Valerium. Ibid. 2. 2.

Is Conſules creavit Q. Publilium Philonem & L. Papirium Curſorem. Ibid. 9. 7.

Factum S. C. ut Q. Furius, Pont. Max. Tribunos plebis crearet. Ibid. 3. 54.

[*g*] Ibi extemplo, Pontifice Maximo comitia habente, Tribunos plebis creaverunt. Ibid.

ſtrangers; and to explane the civil government of *Rome*, and the origin of its laws with the diligence of an Antiquary, as well as the fidelity of an Hiſtorian. This celebrated author then informs us, that when *Romulus* had formed the project of his Senate, conſiſting of an hundred members, he reſerved to himſelf the nomination only of the firſt, or preſident of the aſſembly, and gave the choice of all the reſt to the people, to be made by a vote of their Tribes and their Curiæ. Muſt we then prefer one Greek to all the Latin writers? yes, as we prefer one credible and poſitive evidence, to many of a negative kind; or one, who ſearches things to the bottom, to any number, who, without the pains of ſearching, take up with the popular and vulgar accounts of things.

But of all the Roman writers, whom your Lordſhip has cited, as *Livy* is the chief, ſo he will be found perhaps to be the onely one, who in the preſent caſe

caſe deſerves any regard from us; the reſt of them for the moſt part, being but tranſcribers or epitomizers of him, rather than hiſtorians: ſo that in effect, it is the ſingle credit of *Livy*, which, in the queſtion before us, ſtands oppoſed to *Dionyſius*, and where theſe two happen to differ, it cannot be difficult to decide, which of them ought to have the preference; nay, it is already decided by the judgement of all the beſt critics; who, upon the compariſon, have univerſally preferred the diligence and accuracy of *Dionyſius*, to the haſt and negligence of *Livy* [*b*].

[*b*] Multa enim Dionyſius de Romanorum ceremoniis religionibuſque in Deos; non pauca de variis ritibus atque inſtitutis, deque eorum legibus ac tota politia accurate diligenterque ſcripſit, quæ Livius cæterique Hiſtorici partim omnino prætermiſerunt, partim leviter tantum ſtrictimque attigerunt. H. Steph. in Dionyſ. c. 6.

Cujus major fides in hiſtoria, quam *Livii*, *Tranquilli*, *Taciti*, *Arriani*. Ant. Poſſevin.

Multis argumentis mihi perſuaſi, antiquiſſima hæc populi Romani geſta longe diligentius a *Dionyſio*. Onuph. Panvin Comm. in Faſt. p. 62.

See the teſtimonies of authors prefixed to Hudſon's edit. of Dionyſius.

Let us procede then with our hiſtory. Upon the peace and league of union made between *Romulus* and *Tatius*, King of the *Sabins*, the number of the Senate, as *Dionyſius* writes, was doubled by the addition of an hundred new members from the *Sabin* families; all choſen by the people in the ſame manner as before: in which account, he ſays, all the old writers concur, excepting a few, who declare the additional number of *Sabins* to have been only fifty [*i*]: which may ſerve as a ſpecimen of the diligence of this author's inquiries: whereas *Livy* is not onely ſilent about this augmentation of the Senate, but, as your Lordſhip owns, expreſſly contradicts it. Yet all the later writers, and your Lordſhip with the reſt, chuſe to follow *Dionyſius* in oppoſition to him: and if in this caſe of the augmentation, why not in the other, of the nomination of the Senators? for as far as the caſe can be de-

[*i*] Lib. 2. 47. Edit. Hudſon.

termined

termined by authority, the character of *Dionyſius* will bear us out in adhering to him, preferably to all others; eſpecially in points of antiquity, or things remote from their own knowledge. Let us examine therefore in the next place, what facts may be collected within this period, to confirm the teſtimony of *Dionyſius*.

All hiſtorians agree, that great powers and privileges were originally granted to the people by *Romulus*: who had no ſooner ſecured his new city by a wall, than he began to provide laws for the citizens, becauſe nothing elſe could unite a multitude into one common body [*k*]. This was his firſt care, according to *Livy*, and one of his firſt laws, according to *Dionyſius*, was, to divide the people into *three tribes*, and each tribe into *ten Curiæ*, for the more convenient method of

[*k*] Vocata ad concilium multitudine, quæ coaleſcere in populi unius corpus nulla alia re, præterquam legibus poterat, jura dedit. Liv. 1. 8.

voting and tranſacting the public buſineſs in their aſſemblies [*l*]. He had reigned eleven or twelve years before his union with the *Sabins:* which makes it probable, that he had made this diviſion of the people before that æra; and ſettled what was the firſt thing neceſſary, the form of his political government.

Each of the thirty *Curiæ* of *Old Rome* had a temple or chapel, aſſigned to them, for the common performance of their ſacrifices and other offices of religion: ſo that they were not unlike to our pariſhes. Some remains of which little temples ſeem to have ſubſiſted many ages after on the Palatine hill [*m*], where *Romulus* firſt built the city, and always reſided: whence *Manutius* infers, that the inſtitution of the *Curiæ* was previous to the union with the *Sabins*, ſince theſe were ſeated ſeparately from the Romans on the *Ca-*

[*l*] Dionyſ. l. 2. 7.
[*m*] Tacit. Annal. 12. 24.

pitoline

pitoline and *Quirinal* hills [*n*]: which confirms likewiſe the account of *Dionyſius*, and takes off, what your Lordſhip alledges as an objection to it, that the *Curiæ* were not yet eſtabliſhed, when he ſuppoſes the Senate to have been elected by them.

Again, it is agreed likewiſe by all, that *Romulus* inſtituted the *Comitia Curiata*; or the public aſſemblies of the people, called to vote in their ſeveral *Curiæ*; and that the matters ſubjected to their deciſion, were, the choice of all the magiſtrates, and the right of making of laws, war and peace. An ample juriſdiction, and in the moſt important articles of government; yet not wholly abſolute, as *Dionyſius* ſays, unleſs the Senate concurred with them [*o*].

But this method of tranſacting all the greater affairs by the people, aſſembled in their *Curiæ*, after it had ſubſiſted through five ſucceſſive reigns,

[*n*] Dionyſ. l. 2. 50. [*o*] Id. c. 14.

was

was found to be inconvenient. For in aſſemblies ſo conſtituted, where every individual had an equal vote, the iſſue of all deliberations muſt depend of courſe on the poorer ſort, who are always the moſt numerous, though not always the moſt reaſonable or incorrupt; ſo that *Servius Tullius*, the ſixth King, in order to correct this inconvenience, inſtituted a new diviſion of the people into *ſix claſſes*, according to a *cenſus*, or valuation of their eſtates: then he ſubdivided theſe claſſes into *one hundred and ninety three centuries*, and contrived to throw a majority of theſe centuries, that is, *ninety eight of them*, into the firſt claſs of the richeſt citizens: by which regulation, though every man voted now in his *Century*, as before in his *Curia*, yet, as all matters were decided by a majority of the *Centuries*, ſo the balance of power was wholly transferred into the hands of the rich; and the poorer ſort deprived of their former weight and influence

in

in the affairs of ſtate [*p*]: which wiſe inſtitution was ever after obſerved through all ſucceding ages, in the elections of the principal magiſtrates, and the determination of all the principal tranſactions of the Republic.

Theſe facts, confirmed by all writers, ſhew the power of the people to have been extremely great, even under the regal government. It extended to the choice, not onely of their Kings, but of all the other Magiſtrates, and I find no reaſon to imagine, that the Senators were excepted, or none at leaſt, ſufficient to balance the contrary teſtimony of ſo grave an author as *Dionyſius*.

On the demolition of *Alba* by *Tullus Hoſtilius*, ſome of the chief families of that city were enrolled likewiſe into the Senate. *Livy* reckons ſix, *Dionyſius* ſeven [*q*]: and *Manutius*, to

[*p*] Non enim viritim ſuffragium eadem vi eodemque jure promiſcue omnibus datum eſt: ſed gradus facti, ut neque excluſus quiſquam ſuffragio videretur, & vis omnis pene primores civitatis eſſet. Liv. 1. 43. it. Dionyſ. l. 4. 20, 21.

[*q*] Liv. 1. 30. Dionyſ. 3. 29.

make

make their accounts conſiſt with what is delivered concerning the limited number of the Senate, imagines, that theſe *Albans* were not created Senators, but *Patricians* onely, and by that means rendered capable of being choſen into the Senate on the occaſion of a vacancy. But it may be ſuppoſed perhaps with more probability, that the number of *Albans*, taken into the Senate at that time, was no more than what ſupplied the vacancies then ſubſiſting, ſo as to fill it up to it's ſettled complement of two hundred. This affair however, as *Dionyſius* intimates, was not tranſacted without the conſent both of the Senate and the people.

The laſt augmentation of the Senate, under the Kings, was made by *Tarquinius Priſcus*, who added *an hundred* new members to it, from the *Plebeian* families, and ſo enlarged the whole number from two to *three hundred*. He did this, as *Livy* informs us, to ſtrengthen his particular intereſt,

reſt, and to raiſe a ſure faction to himſelf in the new Senators of his own creation [*r*]: whence M. *Vertot* draws a concluſion, *that the people had no ſhare in this election* [*s*]. But it is incredible, that an innovation of ſuch importance, which muſt needs diſguſt the Nobles, ſhould be attempted and eſtabliſhed by an elective King, if he had not been ſupported by the power and ſuffrages of the commons: and eſpecially by a Prince, ſo cautious of giving jealouſy to his ſubjects, that he would not accept the robes and enſigns of ſoverein power, which were preſented to him by the *Tuſcans*, whom he had ſubdued in war, till he had firſt conſulted the Senate and the people, and obtained their approbation [*t*].

But your Lordſhip here remarks, that *Dionyſius* himſelf aſcribes this act

[*r*] Factio haud dubia Regis, cujus beneficio in curiam venerant. Liv. 1. 35.

[*s*] See M. *Vertot*'s anſwer to E. *Stanhope*.

[*t*] Dionyſ. 3. 62.

to

to the Prince, without any mention of the people [*v*]: To which I anſwer, that after he had preciſely and frequently explaned the whole proceſs of filling up the Senate, might he not think it needleſs to repeat the ceremonial on every occaſion? might he not imagine, that what he had before ſo particularly deſcribed, would be applied to every ſubſequent caſe of the ſame kind? and when he had once ſettled this point, was it not natural for him, like all other writers, and for the ſake of brevity, to impute the act done in conſequence of it, to the principal mover and director of it? Since *Dionyſius* then, the moſt accurate of the Roman hiſtorians, and who treats the particular queſtion under debate more largely and clearly than any of them, is expreſſly on my ſide; and ſince all the reſt, who ſeem to differ from him, touch it but ſlightly and incidentally, nor yet abſolutely contra-

[*d*] Id. 67.

dict

dict him; I cannot help thinking, that, as far as authority reaches, my hypotheſis muſt appear to be better grounded than your Lordſhip's.

I ſhall conſider therefore in the laſt place, how far it is confirmed by arguments, drawn from the nature and fundamental principles of the Roman government, as it was adminiſtered under the Kings. The firſt citizens of *Rome* were all voluntary adventurers, whom their young leader *Romulus* had no power either to force, or means to attach to his Service, but the promiſe of large immunities and rights, and a ſhare with him in the adminiſtration of their common affairs. This indulgence was neceſſary to his circumſtances; and we find accordingly, that he granted them all the privileges even of a *Democracy*; *the right of making laws, war and peace, with the choice of all their magiſtrates*; and moſt probably therefore, of *the Senators*. Now when theſe rights had been once grant-

ed and poſſeſſed by the people, it is not credible, that they would ever ſuffer themſelves to be deprived of them; or that Kings elective, and of ſo limited a juriſdiction, ſhould be diſpoſed, or able to wreſt them wholly out of their hands. Their firſt King *Romulus* no ſooner began to violate the conſtitutions, that he himſelf had made, than, as it is commonly believed, he was privately taken off [*x*]: and their laſt King *Tarquinius*, by a more open and violent infringement of their liberties, not only loſt his crown, but gave occaſion to the utter extinction of the kingly government [*y*]. The intermediate Kings do not ſeem to have made any attempt upon

[*x*] Οἱ δὲ τὰ πιθανώτατα γράφοντες, πρὸς τῶν ἰδίων πολιτῶν λῦσαι αὐτὸν ἀποθανεῖν. Dionyſ. 2. 56. it. Appian. de Bell. Civ. 2.

[*y*] Hic enim regum primus traditum a primoribus morem de omnibus Senatum conſulendi ſolvit. domeſticis conciliis remp. adminiſtravit bellum, pacem, fœdera, ſocietates per ſe ipſe, cum quibus voluit, injuſſu populi ac Senatus, fecit diremitque. Liv. 1. 48.

the

the liberties of the people: for in the caſe abovementioned, when *Servius Tullius* contrived to reduce the authority of the poorer ſort, it was to advance that of the rich; and to change onely the hands, not the power of his maſters: to whom, as *Cicero* intimates, and as *Seneca*, upon his authority, declares, there lay *an appeal* from the magiſtrates, and even from the Kings themſelves [z].

The Kings indeed, by virtue of their office, muſt needs have had a great influence over the deliberations of the people. It was their prerogative, to call the people together; to preſide in their aſſemblies; to propoſe the affairs to be debated; or the perſons to be elected; and to deliver their own opi-

[z] Partim regiis inſtitutis, partim etiam legibus auſpicia, cærimoniæ, provocationes, &c. Cic. Tuſc. Queſt. 4. 1.

Æque notat, Romulum periiſſe ſolis defectione. Provocationem ad populum etiam a regibus fuiſſe. Id ita in pontificalibus libris aliqui putant, & Feneſtella. Senec. Epiſt. 108.

nion the firſt [*a*]. So that we need not wonder, that the writers, who are not treating the matter critically, ſhould impute to them the reſult of all the public councils. They conſtantly do it in the affair of *war and peace*; which yet was the unqueſtionable prerogative of the people; and when they do it therefore in the caſe before us, it cannot be alledged, as an argument of any weight, againſt the people's right of *chuſing the Senators*.

On the whole; ſince the origin of *Rome* itſelf is involved in fable and obſcurity, it is not ſtrange, that the firſt tranſactions of it's citizens ſhould alſo be obſcure and uncertain: but upon the ſtricteſt ſearch into the ſtate of the preſent queſtion, as it ſtood under the kingly government, I cannot but conclude, from the expreſs teſtimony of the beſt hiſtorian, the concurrence of ſimilar facts, and the probability of

[*a*] Βελήν τε συνάγειν, καὶ δῆμον συγκαλεῖν καὶ γνώμης ἄρχειν, καὶ τὰ δόξαντα τοῖς πλείοσιν ἐπιλεῖν. ταῦτα μὲν ἀπέδωκε βασιλεῖ τὰ γέρα. Dionyſ. l. 2. 14.

the

the thing itſelf, that *the right of chuſing Senators* was originally and conſtitutionally veſted in the people.

We are now arrived at the Conſular ſtate of *Rome:* and upon this memorable change of government, and the expulſion of their Kings, effected with ſuch ſpirit and reſolution by an injured people, for the recovery of their juſt rights, we may expect to find them in the poſſeſſion of every privilege, which they could legally claim. For our reaſon would ſuggeſt, what all authors teſtify, that in the beginnings and unſettled ſtate of this revolution, great complaiſance and deference would neceſſarily be paid by the Senate to the body of the Commons [*b*]. I ſhall examine then, what facts and teſtimonies may be alledged in favor of my opinion, during this firſt period of the Conſular government, till the creation

[*b*] Multa blandimenta plebi per id tempus a Senatu data. Liv. 1. 9.

of the Cenſors, which includes the ſpace of ſixty ſeven years.

The firſt exerciſe of the people's power was, to elect two Conſuls, to ſupply the place of the ejected King: who were now choſen, as they were ever after in the *Comitia centuriata*, or by a vote of the people aſſembled in their centuries, according to the inſtitution of *Servius Tullius*: and the firſt care of the new conſuls was, to ſecure to the people all their rights, which their late King *Tarquin* had violated; particularly, the deciſion of all the great affairs of ſtate in their public aſſemblies [*c*].

P. Valerius, the Collegue of *Brutus* in the Conſulate, was ſo warm an aſſertor of the authority of the people, that he acquired by it the name of *Poplicola* [*d*]. Yet happening to build his houſe upon an eminence, he gave umbrage to the citizens, as if he had

[*c*] Dionyſ. 5. 2.

[*d*] Qui populi majeſtatem venerando *Poplicolæ* nomen aſſecutus eſt. Val. Max. 4. 1.

deſigned it for a citadel, and affected a power dangerous to their liberty. Upon which, he demoliſhed what he had built, and calling the people together, in order to juſtify himſelf, commanded his officers, on their entrance into the aſſembly, to ſubmit and let fall *the faſces*, or enſigns of his magiſtracy, as an acknowledgment, that *the majeſty of the Commons* was ſuperior to that of the Conſuls [*e*]. If the power therefore of the Conſuls was the ſame with that of the Kings, as all the ancient writers declare [*f*], it is certain, that the power of the people was always ſuperior to them both.

[*e*] Gratum id multitudini ſpectaculum fuit, ſubmiſſa ſibi eſſe imperii inſignia; confeſſionemque factam, populi quam Conſulis majeſtatem, vimque majorem eſſe. Liv. 2. 7. Vid. Dionyſ. 5. 19.

[*f*] Sed quoniam regale civitatis genus probatum quondam, poſtea non tam regni quam regis vitiis repudiatum eſt, res manebat, cum unus omnibus magiſtratibus imperaret. Cic. de Legib. 3.

Libertatis autem initium inde magis, quia annuum imperium Conſulare factum eſt, quam quod diminutum quicquam ſit ex regia poteſtate, omnia jura, omnia inſignia primi Conſules tenuere. Liv. 2. 1.

This was the ſtate of things in the infancy of the Republic; in which the people were much careſſed by the nobles, as long as there was any apprehenſion of danger from their depoſed King or his family [*g*]: and in theſe circumſtances, the Senate, which had been reduced, by *Tarquin*'s arbitrary reign, to half it's legal number, was filled up to it's former complement of *three hundred*, by *Brutus* and *Valerius*; or by the one or the other of them, as writers differently relate it. All that *Dionyſius* indeed and *Livy* ſay upon it, is, *that a number of the beſt citizens were choſen from the commons to ſupply the vacancies* [*h*]. But we cannot imagine, that an act of ſo great moment could paſs without the ſpecial command and ſuffrage of the people, at a time, when nothing elſe of any moment paſſed without it: the reaſon of the thing, and the power of the peo-

[*g*] Plebi, cui ad eum diem ſumma ope inſervitum erat. Ibid. 21.

[*h*] Liv. 2. 1. Dionyſ. 5. 13.

ple

ple in all ſimilar caſes, muſt perſuade us of the contrary.

The next fact, that relates to our queſtion, is, the admiſſion of *Appius Claudius* into the Senate. He was one of the Chiefs of the *Sabin* nation, who deſerted to *Rome*, with a body of his friends, and dependents, to the number of five thouſand; to whom the freedom of the city, and lands were publicly aſſigned, and to *Appius* himſelf, a place in the Senate. *Livy* does not ſay, by what authority this was done; but *Dionyſius*, that it was by an *order of the Senate and people* [*i*]: that is, by a previous decree of the Senate, approved and ratified by an aſſembly of the commons: which was the legal and regular way of tranſacting all the public buſineſs, from the very beginning of the Republic, and continued generally to be ſo, in all

[*i*] Ἀνθ' ὧν ἡ βουλὴ καὶ ὁ δῆμος εἰς τε τὰς πατρικίους αὐτὸν ἐνέγραψε. Dionyſ. l. 5. 40. Liv. 2. 16.

quiet and peaceable times, to the end of it [*k*].

Theſe are the onely examples of filling up the Senate, from the expulſion of the Kings, to the creation of the Cenſors: and though we are not directly informed, by what authority they were affected, yet it is certain, that it was by the intervention and power of the people; agreeably to the expreſs teſtimony of *Cicero*, and the ſpeech of *Canuleius* the Tribun, referred to by your Lordſhip, wherein it is declared, that from the extinction of the Regal government, the admiſſion of all members into the Senate

[*k*] Brutus ex S. Co. ad populum tulit. Liv. 2. 2.

Per interceſſionem Collegarum, qui nullum plebiſcitum niſi ex auctoritate Senatus, paſſuros ſe perferri, oſtendunt, diſcuſſum eſt. Liv. 4. 49.

Poteſtas in populo auctoritas in Senatu eſt. Cic. de Leg. 3.

Decreverunt Patres, ut cum populus regem juſſiſſet, id ſic ratum eſſet ſi patres auctores fierent. hodieque in legibus Magiſtratibuſque rogandis, uſurpatur idem jus, vi adempta, priuſquam populus ſuffragium ineat, in incertum comitiorum eventum patres auctores fiunt. Liv. 1. 17.

was

was given by *the command of the people* [*l*].

From theſe augmentations juſt mentioned, to the inſtitution of the Cenſorſhip, there is an interval of ſixty years or more, without the mention of any review or ſupply of the Senate whatſoever: and yet there muſt have been ſome conſtant method of ſupplying it during that time, or it would have been wholly extinct. The Conſuls, whoſe province it then was, to hold *the Cenſus, and general luſtration* of the citizens, as oft as they found it neceſſary, had, in conſequence of that duty, the taſk alſo of ſetling the roll of the Senate at the ſame time. Yet there is no inſtance recorded, of the exerciſe of that power, or of any act relating to it, either by the admiſſion

[*l*] Deligerentur autem in id conſilium ab univerſo populo, adituſque in illum ſummum ordinem omnium civium induſtriæ ac virtuti pateret. Cic. pr. Sext. § 137.

Aut ab regibus lecti, aut poſt reges exactos, juſſu populi. Liv. 4. 4.

or

or ejection of any Senators: ſo that the ſtate of the Senate in this period is left wholly dark to us by the ancients, nor has been explaned, as far as I know, by any of the moderns.

The moſt probable account of the matter is this; that the Senate began now to be regularly ſupplied by the annual Magiſtrates, who were inſtituted about this time, and choſen by the people. Theſe were two *Quæſtors* of *Patrician* families, and *five Tribuns* of the people, with two *Ædiles* of *Plebeian* families; to which *five more Tribuns* were afterwards added: and if we ſuppoſe all theſe to have had an admiſſion into the Senate by virtue of their office, and conſequently, a right to be enrolled by the Conſuls at the next luſtrum, this would yield a competent ſupply to the ordinary vacancies of that aſſembly: which might receive ſome acceſſion alſo from the *Decemviri*, who were not all Patricians, nor yet Senators perhaps, before their election to

that

that magiſtracy. If this was the caſe, as I take it to have been, it will help us to account for the ſilence of authors about it, as being a thing, that ſucceeded of courſe, ſo as to have nothing in it remarkable, or what ſeemed to deſerve a particular recital.

The office of *Quæſtor*, which was inſtituted the firſt, is always mentioned by the ancients, as the firſt ſtep of honor in the Republic, and what gave an entrance into the Senate [*m*]. As to *the Tribuns*, it has been taken for granted, on the authority of *Valerius Maximus*, that, on their firſt creation, they were not admitted into the Senate, but had ſeats placed for them before the door, in the veſtibule [*n*]. But we may reaſonably conclude, that a Magiſtrate ſo ambitious and power-

[*m*] Quæſtura, primus gradus honoris. Cic. in Ver. Act. 1. 4.

[*n*] Illud quoque memoria repetendum eſt, quod Tribunis plebis intrare Curiam non licebat. ante valvas autem poſitis ſubſelliis, decreta patrum attentiſſima cura examinabant. Val. Max. l. 2. c. 2. 7.

ful,

ful, who could controul, by his ſingle negative, whatever paſſed within doors, would not long be content to ſit without. *A. Gellius* ſays, that they were not made Senators before the law of *Atinius* [*o*]; who is ſuppoſed to be *C. Atinius Labeo*, Tribun of the people, A. U. 623 [*p*]: but that cannot poſſibly be true, ſince it is evident from the authority of *Dionyſius*, that near four centuries before, *the Tribuns*, by the mere weight and great power of their office, had gained an actual admiſſion into the Senate within two years after their firſt creation [*q*]: in which we find them debating and enforcing with great warmth the demands of the

[*o*] Nam & Tribunis plebis Senatus habendi jus erat, quanquam Senatores non eſſent, ante Atinium Plebiſcitum. A. Gell. 14. 8.

[*p*] Vid. Pighii Annales. A. U. 623.

Ταῦτα δὲ ὀρωνλες οἱ δήμαρχοι. παρῆσαν γὰρ τῷ συνεδρίῳ, παρακληθέντες ὑπὸ τῶν ὑπάτων. Dionyſ. l. 7. 25. A. U. 263.

Καὶ τοῦτο ἔπεισαν ἡμᾶς οἱ σύμβελοι τὸ ἀρχεῖον ἑαυτοῦ παρελθεῖν εἰς τὴν βελὴν. Ibid. 49.

[*q*] Ἐπειδὰ συναχθέντες εἰς τὸ βελευτήριον οἱ σύνεδροι, παρόντων καὶ τῶν δημάρχων. Dionyſ. l. x. 11.

Commons,

Commons, for a liberty *of intermarriages with the nobles, and the choice of a Plebeian Conſul* [*r*]: ſo that the intent of this *Atinian* law could not be, as it is commonly underſtood, that the Tribuns ſhould be Senators in virtue of their office, for that they had been from the beginning, but that for the future, they ſhould always be choſen out of the body of the Senate, or, which is the ſame thing, out of thoſe, who had already born the office of *Quæſtor*.

About thirteen years before the creation of the Cenſors, the Tribuns began to aſſume a right of ſummoning or convoking the Senate; and of propounding to them whatever they thought proper [*s*]. A prerogative, which the Conſuls alone had ever exerciſed before; and which I take to be a clear proof of their being then members of the Senate: and I find alſo, that

[*r*] Liv. 4. 1, 2, 3. Dionyſ. xi. 57.
[*s*] Dionyſ. x. 31.

two

two Patricians, even of Conſular dignity, were elected Tribuns of the people about the ſame time, in an extraordinary manner [*t*]: which can hardly be accounted for, without ſuppoſing this Magiſtracy to have had an admiſſion into the Senate.

Some few years before this, upon the death of one of the Conſuls and the ſickneſs of the other, at a time of great conſternation in *Rome*, the ſupreme power and care of the public was committed to the *Ædiles* [*v*]: which great deference to their office, makes it reaſonable to conclude, that theſe magiſtrates alſo were at this time in the Senate, as they unqueſtionably were within a ſhort time after. But the warm conteſt hinted above, about the right of electing a *Plebeian Conſul*,

[*t*] Novi Tribuni plebis in cooptandis collegis, Patrum voluntatem foverunt: duos etiam Patricios Conſulareſque Sp. Tarpeium & A. Aterium cooptavere. Liv. 3. 65.

[*v*] Circuitio & cura Ædilium plebei erant. ad eos ſumma rerum ac majeſtas Conſularis imperii venerat. Liv. 3. 6, 7.

which

which continued on foot for a long time, ſeems to demonſtrate the truth of my opinion; it being wholly incredible, that the Commons ſhould demand to have one of their body placed at the head of the Senate, before they had obtained ſo much as an entrance into it, for any of the other plebeian magiſtrates.

I cannot omit the mention of one fact more, not foreign to our preſent purpoſe, though it did not happen till about two hundred years later; which is this; the *Flamen Dialis*, or ſovereign prieſt of *Jupiter*, revived an ancient pretenſion to a ſeat in the Senate, in right of his office; which, by the indolence of his predeceſſors, had not been clamed or enjoyed for many generations. The Prætor rejected his claim, nor would ſuffer him to ſit in that aſſembly: but upon his appeal to the Tribuns, that is, to the people, his right was confirmed, and he was allowed to take his place as a Senator.

nator [*x*]. This caſe ſhews, that the privilege of the Senate might be annexed to an office, without any notice taken of it by the hiſtorians; for we have not the leaſt hint from any of them, of the origin of this *Flamen*'s right; nor any mention of him as a Senator, but on this very occaſion: though by the manner of his appeal, the claim ſeems to have been grounded on ſome old grant from the people.

But it may perhaps be objected, that though the annual magiſtrates might furniſh a tolerable ſupply to the ordinary vacancies of the Senate, yet there muſt have been ſome other method of providing for the extraordinary deficiencies, made by the calamitous accidents of wars abroad, or ſickneſs at home, of which there are ſeveral inſtances in the Roman hiſtory. In anſwer to which, it muſt be owned, that the Senate, in ſuch particular exigencies, would demand a larger ſupply,

[*x*] Liv. 27. 8.

than

than the public offices could furniſh: and the method of ſupplying it ſeems to have been regulated by what the firſt Conſuls did, upon the firſt enrollment and completion of the Senate: for this was probably the ſtanding precedent; agreeably to which, all the future Conſuls, as we may reaſonably preſume, uſed to pitch upon a number of the beſt and moſt reputable citizens of the Equeſtrian rank, to be propoſed to the choice and approbation of the people in their general aſſembly; who, by approving and confirming the liſt, gave them a complete and immediate right to the rank and title of Senators during life.

This will appear ſtill more probable, by reflecting on a fact or two delivered by all the Hiſtorians. *Sp. Mælius*, who was attempting to make himſelf King, was one of the moſt wealthy and popular Commoners of the Equeſtrian order, yet from *Livy*'s account, it is plain, that he was a Se-

nator: for his firſt ambition, it is ſaid, was onely to be choſen Conſul, which ſeems to imply it: but the Dictator's ſpeech concerning him directly aſſerts it: for he obſerves with indignation, that *he, who had not been ſo much as a Tribun, and whom, on the account of his birth, the city could hardly digeſt as a Senator, ſhould hope to be endured as a King* [*y*].

About forty years after this, *P. Licinius Calvus*, another eminent commoner, was elected one of the military Tribuns with conſular authority. He was the firſt plebeian, who had been raiſed to that dignity: but hiſtory has not informed us, what particular merit it was, that advanced him to it: for as *Livy* obſerves, *he had paſſed through none of the public offices, and was only an old Senator of great*

[*y*] Ex equeſtri ordine, ut illis temporibus, prædives—cui Tribunatus plebis magis optandus quam ſperandus—ut quem Senatorem concoquere civitas vix poſſet, regem ferret. Liv. 4. 13, 15.

age.

age[z]. If we ſhould aſk then, how theſe two Plebeians came to be made Senators, without having born any magiſtracy, there is no anſwer ſo probable, as that they were added to the roll of the Senate, with other eminent citizens, by the command of the people, on ſome extraordinary creation. For if the nomination had wholly depended on the will of any *Patrician* magiſtrate, it is ſcarce to be imagined, that he would have beſtowed that honor on *Plebeian* Families.

I ſhall procede in the next place, to conſider the State of the Senate, after the eſtabliſhment of the Cenſors, and try to reconcile my hypotheſis, with the great power and authority delegated to theſe magiſtrates in the affair of creating Senators, in which the whole Difficulty of the preſent quæſtion conſiſts.

The people were now, as the ancient writers tell us, the ſole arbiters

[z] Vir nullis honoribus uſus, vetus tamen Senator & ætate jam gravis. Liv. 5. 12.

of rewards and puniſhments, on the diſtribution of which depends the ſucceſs of all governments; and in ſhort, had the ſupreme power over all perſons and all cauſes whatſoever [*a*]. Theſe accounts leave no room for any exception, and make it vain to ſuppoſe, that the commons, in this height of power, would eſtabliſh a private juriſdiction, to act independently and excluſively of their ſupremacy. But beſides the proofs already alledged of their univerſal prerogative, we have clear evidence likewiſe of their ſpecial right in this very caſe of making Senators. The teſtimony of *Cicero* produced above, is deciſive: and the frequent declarations, which he makes, both to the Senate and the people, that he owed all his honors, and particularly his ſeat

[*a*] Quum illi & de Sempronio & de omnibus ſummam populi Romani poteſtatem eſſe dicerent. Liv. 4. 42.

Populus Romanus, cujus eſt ſumma poteſtas omnium rerum. Cic. de Haruſp. reſponſ. 6. Vide Polyb. l. 6. 462, B. Τιμῆς γάρ ἐϛι ἡ τιμωρίας ἐν τῇ πολειτείᾳ μόνος ὁ δῆμος κύριος, &c.

in

in the Senate, to the favour of the people [*b*], are unquæſtionable proofs of it. For ſuch ſpeeches delivered in public, and in the face of the Cenſors themſelves, muſt have been conſidered as an inſult on their authority, and provoked their animadverſion, if they had not been confeſſedly and indiſputably true. The teſtimony of *Cicero* is confirmed alſo by *Livy* [*c*], which gives occaſion to *M. Vertot* to obſerve, *that the ſole right of creating Senators is attributed to the people by two, the moſt celebrated writers of the republic.*

[*b*] Rex denique ecquis eſt, qui Senatorem Populi Romani tecto ac domo non invitet? qui honos non homini ſolum habetur, ſed primum *Populo Romano*, cujus beneficio in hunc ordinem venimus. In Ver. l. 4. xi.

Si populum *Romanum*, cujus honoribus in ampliſſimo concilio & in altiſſimo gradu dignitatis, atque in hac omnium terrarum arce collocati ſumus. Poſt redit. in Sen. 1.

Et palam fortiſſime atque honeſtiſſime dicerent, ſe potuiſſe judicio populi Romani in ampliſſimum locum pervenire, ſi ſua ſtudia ad honores petendos conferre voluiſſent. Pr. Cluen. 56.

[*c*] Aut ab regibus lecti, [in Senatum] aut poſt reges exactos, juſſu populi. Liv. 4. 4.

But after the acknowledgment of ſo great an authority, he affirms, too inconſiderately, in the very next words, *that all the facts and examples of hiſtory are clearly againſt it* [*d*]. For whatever thoſe facts may ſeem to intimate, on a ſlight view, and at this diſtance of time, yet it is certain, that they muſt admit ſuch an interpretation, as is conſiſtent with a teſtimony ſo preciſe and authentic.

But in truth, the people's right of chuſing magiſtrates, was the ſame with that of chuſing Senators; ſince the magiſtrates by virtue of their office obtained a place of courſe in the Senate: that is, *the Quæſtors, Tribuns of the people, Ædiles, Prætors, Conſuls*; for this was the regular gradation or ſteps of honor, which every man, in the courſe of his ambition, was to aſcend in their Order. A method, contrived with great prudence and policy; by which no man could be entruſted with

[*d*] Reponſe au Memoire de Ld. Stanhope.

the

the ſupreme power, and the reins of government, till he had given a ſpecimen of his abilities, through all the inferior offices, and ſubordinate branches of it: and we find accordingly in the old Faſti or Annals, many examples of perſons who had proceded regularly through them all [*e*].

The young Patricians indeed, proud of their high birth, and truſting to the authority of their families, would often puſh at the higher offices, without the trouble of ſolliciting for the lower. But this was always reſented and complained of by the Tribuns, as an infringement of the conſtitution; *that the nobles in their way to the Conſulſhip, ſhould jump over the intermediate ſteps, and ſlight the inferior honors of Ædile and Prætor:* as in the caſe of *T. Quinctius Flaminius*, who from his firſt preferment of *Quæſtor*, was elected conſul by the authority of the Se-

[*e*] Q. Caſſius Longinus was choſen Quæſtor A. U. 575. Tribun of the people 580. Ædile 583. Prætor 586. Conſul 589. Vide Pigh. Annales.

nate [*f*]: and it was to correct this licenſe and irregularity, that *Sylla* afterwards, by a ſpecial law, injoined the obligation of paſſing through the inferior offices, as a neceſſary qualification for the conſulate. But the practice itſelf did not derive it's origin from this *Cornelian* law, as your Lordſhip ſeems to intimate, but was grounded on a conſtitution or cuſtom of ancient ſtanding.

Let us examine then after all, what part really belonged to the Cenſors, in this affair of creating Senators. This magiſtracy was firſt inſtituted, A. U. 311. not to take any ſhare of power from the people, but of trouble only from the Conſuls: who now began to have more of it than they could poſſibly diſcharge: and the ſpecial buſineſs of theſe Cenſors, was to eaſe them of

[*f*] Comitia per Tribunos pl. impediebantur, quod T. Quinctium Flamininum Conſulatum ex Quæſtura petere non patiebantur. Jam Ædilitatem Præturamque faſtidiri, nec per honorum gradus documentum ſui dantes, nobiles homines tendere ad Conſulatum, ſed tranſcendendo media imis continuare. Liv. 32. 7.

the

the taſk of holding the *Cenſus & Luſtrum*, which the Conſuls had not been able to do for ſeventeen years paſt: that is, to take a general review of the whole people, as oft as there ſhould be occaſion; to ſettle the ſeveral diſtricts and diviſions of the tribes; to aſſign to every citizen his proper rank and order, according to a valuation of his eſtate; and laſtly, to call over the Senate, and make a freſh roll, by leaving out the names of the deceaſed, and adding thoſe, who had acquired a right to fill their places; that is the magiſtrates, who had been elected into their offices ſince the laſt call.

But beſides this taſk, which was purely miniſterial, they had the particular cognizance and inſpection of the manners of all the citizens, and in conſequence of it, a power to cenſure or animadvert upon any vice or immorality, in all orders of men whatſoever; which they took an oath to diſcharge without favour or affection.

But

But this power reached no farther than to inflict ſome publick mark of ignominy, on lewd and vicious perſons, in proportion to the ſcandal, which they had given, by degrading or ſuſpending them from the privileges of that particular rank, which they held in the city. This was their proper juriſdiction, and the foundation of their power over the Senate; by virtue of which, they frequently purged it of ſome of its unworthy and profligate members; by leaving out of the new-roll, the names of thoſe Senators, whom they found unworthy to ſit in that auguſt aſſembly, for the notoriety of their crimes; which they uſed commonly to aſſign, as the cauſe of their inflicting this diſgrace [*g*]. There are many examples

[*g*] Cenſor-penes quem majores noſtri judicium Senatus de dignitate eſſe voluerunt. Cic. pro Dom. 51.

Hic annus Cenſuræ initium fuit; rei a parva origine ortæ: quæ deinde tanto incremento aucta eſt, ut morum diſciplinæque Romanæ penes eam regimen, Senatus, Equitumque centuriæ, decoris dedecoriſque diſcrimen ſub ditione ejus magiſtratus. Liv. 4. 8.

Patrum memoria inſtitutum fertur, ut Cenſores Senatu motis adſcriberent notas. Id. 39. 42.

of

of Senators thus expelled by the Cenſors, generally for good reaſons; yet ſometimes through mere peeviſhneſs, envy or revenge [*b*]: but in ſuch caſes, there was always the liberty of an appeal to the final judgement of the people. So that the Cenſorian power, properly ſpeaking, was not that of making or unmaking Senators, but of enrolling only thoſe, whom the people had made; and of inſpecting their manners, and animadverting upon their vices; over which they had a ſpecial juriſdiction delegated by the people. Their rule of cenſuring ſeems to have been grounded on an old maxim of the Roman policy, injoining, *that the Senate ſhould be pure from all blemiſh, and an example of manners to all the*

[*b*] See the account of the Cenſorſhip of C. Claudius Nero, and M. Livius Salinator, in which they both peeviſhly affronted and diſgraced each other, and were called to an account for their adminiſtration by one of the Tribuns. Itaque ibi fœdum certamen inquinandi famam alterius cum ſuæ famæ damno factum eſt.——Cn. Bæbius Tribunus plebis ad populum diem utrique dixit. Liv. 39. 37.

other

other orders of the city: as we find it laid down by *Cicero* in his book of laws, which were drawn, as he tells us, from the plan of the Roman conſtitution [*i*].

It is certain, that ſeveral laws were made at different times to regulate the conduct of the Cenſors, of which we have now no remains. *Feſtus* ſpeaks of one, not mentioned by any other writer, the *Ovinian law*; by which they were obliged, in making up the roll of the Senate, *to take the beſt men of every order, choſen in an aſſembly of the Curiæ* [*k*]. This law was probably made ſoon after the creation of the Cenſors, or as ſoon at leaſt as they began to extend their power, and uſe it arbitrarily; in order to reduce them to the original conſtitution. *Cicero*

[*i*] Cenſores probrum in Senatu ne relinquunto, Is ordo vitio careto. Ceteris ſpecimen eſto. Cic. de Leg. 3.

[*k*] Donec Ovinia Tribunitia intervenit, qua ſanctum eſt, ut Cenſores ex omni ordine optimum quemque curiatim Senatu legerent. in Voc. Præteriti.

takes

takes occaſion to obſerve in one of his ſpeeches, " that their anceſtors had " provided many checks and reſtraints " on the power of the Cenſors: that " their acts were often reſcinded by a " vote of the people: that the people " by marking a man with infamy, or " convicting him of any baſe crime, " deprived him at once of all future " honors, and of all return to the Se- " nate; but that the Cenſorian ani- " madverſion had no ſuch effect; and " that the perſons diſgraced by it were " commonly reſtored to the Senate, " and ſometimes made even Cenſors " after it themſelves [*l*]." And in ano- ther place he ſays, " that the judge- " ment of the Cenſors had no other " force, than of putting a man to the " bluſh; and that it was called igno- " miny, becauſe it was merely nomi- " nal [*m*]."

L. Metellus was animadverted up-

[*l*] Pro Cluent. 42, 43, 44.
[*m*] Fragment. de Repub. l. 4.

on

on by the Cenſors, while he was *Quæſtor:* yet, notwithſtanding that diſgrace, was choſen Tribun of the people, the year following, A. U. 540: in which office, he called the Cenſors to an account before the people, for the affront, which they had put upon him; but was hindered by the other Tribuns, from bringing that affair to a trial [*n*]. We find likewiſe *C. Claudius* and *T. Sempronius* called to an account before the people for their adminiſtration in the Cenſorſhip [*o*]: and in a diſpute between themſelves, about the aſſignment of a proper tribe to the ſons of ſlaves made free, *Claudius* alledged, *that no Cenſor could take from any citizen his right of ſuffrage, without the expreſs com-*

[*n*] Extemplo Cenſoribus—a L. Metello Tribuno pleb. dies dicta ad populum eſt. Quæſtorem eum proximo anno tribu moverant—ſed novem tribunorum auxilio, vetiti cauſam in magiſtratu dicere. Liv. 24. 43.

[*o*] Non recuſantibus Cenſoribus, quo minus primo quoque tempore judicium de ſe populus faceret. Liv. 43. 16.

mand

mand of the people [*p*]. *Q. Metellus*, when Cenſor, left the name of *Atinius*, one of the Tribuns of the People, out of the roll of the Senate: but the Tribun, enraged by the affront, ordered the Cenſor to be ſeized and thrown down the *Tarpeian* rock; which would probably have been executed, if the other Tribuns had not reſcued him. The ſame Tribun however took his revenge, by the ſolemn conſecration of *Metellus's goods* [*q*]. Now theſe facts demonſtrate, that the power of the Cenſors, inſtead of being abſolute, as your Lordſhip contends, in the caſe of making Senators, had in reality little or no ſhare in it; and

[*p*] Negabat Claudius ſuffragii lationem injuſſu populi Cenſorem cuiquam homini, nedum ordini univerſo adimere poſſe. Liv. 45. 15.

[*q*] Atqui C. Atinius, patrum memoria, bona *Q. Metelli*, qui eum ex Senatu Cenſor ejecerat—conſecravit; foculo poſito in roſtris, adhibitoque Tibicine. Cic. pr. Dom. 47.

Q. Metellus—ab C. Atinio Labeone—revertens e campo, meridiano tempore, vacuo foro & Capitolio, ad Tarpeium raptus ut præcipitaretur, &c. Plin. Hiſt. Nat. 7. 44.

was much limited alſo and reſtrained, in, what is allowed to be their proper juriſdiction, the affair even of unmaking or degrading them.

Let us inquire therefore, on what reaſons *M. Vertot* has ſo peremptorily declared, that the facts and examples of hiſtory are contrary to this notion of the people's power, in the caſe under debate. By theſe facts, he means the inſtances of Senators created and expelled by the ſole authority of the Cenſors, without any apparent conſent or interpoſition of the people: and ſo far it muſt be allowed, that they ſeldom made a new roll of the Senate, without ſtriking ſeveral out of it, as either their own tempers, or the particular condition of the times, diſpoſed them to more or leſs ſeverity: and their adminiſtration was uſually reckoned moderate, when *three or four* onely were ſo diſgraced by them [*r*].

[*r*] Cenſores T. Quintius Flamininus & M. Claudius Marcellus Senatum perlegerunt. quatuor ſoli præ-

But it muſt always be remembered, that the ejected Senators had the right of an appeal and redreſs from the people, if they thought themſelves injured; and if they did not take the benefit of it, we may impute it to a diſtruſt of their cauſe, and a conſciouſneſs of their guilt.

Cato the elder, when Cenſor, ſtruck *ſeven* out of the roll of the Senate: and among the reſt, one of Conſular dignity; the brother of the great *T. Flamininus*. But the high quality of the perſon diſgraced, obliged *Cato* to ſet forth the greatneſs of his crime in a ſevere ſpeech; on which *Livy* remarks, "that, if he had made the "ſame ſpeech, by way of accuſation, "to the people, before his animadver-"ſion, which he made afterwards, "to juſtify it, even *T. Flamininus* "himſelf, if he had then been Cenſor, "as he was in the preceding Luſtrum,

præteriti ſunt, nemo curuli honore uſus, & in equitatu recenſendo mitis admodum cenſura fuit. Liv. 38. 28.

" could not have kept his brother in " the Senate." In the end of this ſpeech, *Cato* puts the ejected Senator in mind, " that, if he denied the fact, " with which he was charged, he might " defend himſelf, by bringing the mat- " ter to a trial; if not, no body would " think him too ſeverely treated [*s*]." This caſe ſhews, what was the legal and ordinary method of relief, as well as the reaſon, why few perhaps were diſpoſed to make uſe of it.

The Cenſors were generally men of the firſt dignity in the city, and always of Conſular rank; ſo that their acts had naturally a great weight: and the ſeverity of their diſcipline was conſidered by the honeſt of all orders, as a great guard and ſecurity to the Republic: and when they acted even on ſpiteful and peeviſh motives, yet the parties injured would not always take the trouble of going through a trial, ſince they could be relieved without it, either

[*s*] Liv. 39. 42, 43.

by the next Cenſors, as they commonly were [*t*]; or by obtaining a new magiſtracy, in the next annual elections; by which they were reſtored of courſe to the Senate. But if any of theſe animadverſions continued to have a laſting effect, it was always owing to an univerſal approbation of them from all the orders of the city: for whenever they appeared to be violent or groſſly unjuſt, neither the Senate nor the people would endure them for a moment.

Thus when *Appius Claudius* the Cenſor, [A. U. 441.] upon ſome extraordinary deficiency in the Senate, filled up the new roll with ſome of thoſe citizens, *whoſe grandfathers had been ſlaves*, contrary to the eſtabliſhed rule and practice of the city, *there was not a ſoul*, as *Livy* ſays, who *looked upon that enrollment as valid* [*u*]: and

[*t*] Eorum notam Succeſſores plerumque ſolvebant. Aſcon. in Divinat. 3.

[*u*] Appii Claudii cenſura vires nacta, qui Senatum primus libertinorum filiis inquinaverat. & poſteaquam eam lectionem nemo ratam habuit.—Liv, 9. 46.

the firſt thing, that the next Conſuls did, was, to annul it by an appeal to the people, and to reduce the Senate to the old liſt, as it was left by the preceding Cenſors [*w*].

The office of Cenſor, at it's firſt inſtitution, was deſigned to be *quinquennial*, or to continue in the ſame hands for five years; but this length of magiſtracy, unknown before to *Rome*, was reduced ſoon after to one year and an half, by a law of *Mamercus Æmilius*, the Dictator: which regulation, tho' popular, provoked the Cenſors ſo highly, that in revenge for this abridgment of their authority, they put the laſt diſgrace upon the Dictator himſelf, by turning him even out of his tribe, and depriving him of his vote as a citizen. But a proceding ſo extravagant was immediately over-ruled,

[*w*] Itaque Conſules—initio anni, queſti apud populum deformatum ordinem prava lectione Senatus—negaverunt eam lectionem ſe, quæ ſine recti pravique diſcrimine, ad gratiam libidinemque facta eſſet, obſervaturos.—Ibid. 30.

nor ſuffered to have the leaſt effect: and the people were ſo enraged at it, that they would have torn the Cenſors in pieces, had they not been reſtrained by the authority of *Mamercus* himſelf [*x*]: who, within eight years after, was made Dictator again for the third time. *So little regard was paid*, as *Livy* obſerves, *to the Cenſorian mark of diſgrace, when it was inflicted unworthily* [*y*]: and about a century after, we find one of the Tribuns ſpeaking of this ſame fact, as a proof of the miſchief, which the violence of theſe magiſtrates might do in the Republic [*z*].

I have hitherto been explaning the ordinary power and juriſdiction of the

[*x*] Populi certe tanta indignatio coorta dicitur, ut vis a Cenſoribus nullius auctoritate præterquam ipſius Mamerci, deterreri quiverit. Liv. 4. 25.

[*y*] Adeo—nihil cenſoria animadverſio effecit, quo minus regimen rerum ex notata indigne domo peteretur. Ibid. 30.

[*z*] Tenuit Æmilia lex violentos illos Cenſores—qui, quid iſte magiſtratus in Repub. mali facere poſſent, indicarunt, &c. Ib. 34.

Cenſors, as far as it related to the creation of Senators. But as under the Conſuls, ſo under theſe Magiſtrates, there muſt have been, as I obſerved, ſome extraordinary creations, made to ſupply the extraordinary vacancies, occaſioned by wars and contagious diſtempers: and in all ſuch caſes, it was certainly a ſtanding rule, to draw out a liſt of the beſt men from all the orders of the city, to be propoſed to the ſuffrage and approbation of the people, in their general aſſembly.

We meet with no account indeed of any ſuch extraordinary creation, under the authority of the Cenſors; nor even of any ordinary one, till one hundred and twenty years after their firſt inſtitution, in the Cenſorſhip of *Appius Claudius*: yet from the reaſon of the thing we may fairly preſume, that there had been ſeveral inſtances of both kinds. We read of a Dictator choſen for that very purpoſe, A. U. 537, at a time, when there were no

Cenſors

Cenſors in office, and when the Senate was reduced by the war with *Hannibal*, to leſs than half of its uſual complement. This Dictator, *M. Fabius Buteo*, being a prudent and moderate man, reſolved to take no ſtep beyond the ordinary forms. " Wherefore he immediately aſcended " the Roſtra, and in an aſſembly of " the people, called thither for that " occaſion, ordered the laſt Cenſorian " roll of the Senate to be tranſcribed " and read over, without ſtriking one " name out of it: and gave this rea- " ſon for it, that it was not fit for a " ſingle man, to paſs a judgement up- " on the reputation and manners of " Senators, which belonged by law to " two. Then in the place of the dead, " he firſt added thoſe, who had born " any *Curule Magiſtracy* ſince the laſt " call; after them, the *Tribuns, Æ-* " *diles and Quæſtors*; and laſtly thoſe, " who had not born any of theſe of- " fices, but had ſerved with honor in

" the wars, and *could ſhew ſpoils taken*
" *from the enemy, or a Civic crown:*
" and having thus added *an hundred*
" *and ſeventy ſeven* new members to
" the old liſt, with the univerſal ap-
" probation of the aſſembly, he laid
" down his office [*a*].

M. Vertot argues, that this nomination of Senators was the pure act and deed of the Dictator, or otherwiſe there could be no reaſon to praiſe him for it: which he confirms, by ſhewing alſo, on the other hand, that the blame of a bad choice was imputed likewiſe to the magiſtrate; as in the caſe of *Appius Claudius*, when he attempted to introduce the grandſons of ſlaves into the Senate [*b*]. But this reaſoning is not well grounded, for though praiſe or blame would naturally fall upon the magiſtrate, in proportion, as what he recommended and attempted to enact, happened to deſerve the one or the

[*a*] Liv. 23. 33.
[*b*] See Reponſe au Memoire de Lord Stanhope.

other,

other, yet theſe two caſes ſhew, that the approbation or diſlike of the people did not terminate in the mere praiſe or diſpraiſe of the magiſtrate; but affected the very eſſence and validity of his act: for in the firſt caſe, where the people approved, the act ſtood firm, and had it's effect; but in the other, where they diſapproved, it was preſently annulled and reſcinded.

There was another extraordinary creation of Senators made by *Sylla*, the Dictator, in order to fill up the Senate, exhauſted by his proſcriptions and civil wars, with *three hundred new members from the Equeſtrian rank:* the choice of whom he gave intirely to the people, in an aſſembly of their tribes, which of all elections was the moſt free. His deſign without doubt was, to make them ſome amends for his other violences, by paying this reſpect to their ancient rights and liberties [*c*].

[*c*] Appian. de Bell. Civ. l. 1. p. 413.

There is a third augmentation alſo, prior to that of *Sylla*, mentioned by the epitomizer of *Livy*, and aſcribed to *C. Gracchus* [*d*]. By which *ſix hundred of the Equeſtrian rank* are ſaid to have been added to the Senate at once. But this cannot be true, as being contrary to the teſtimony of all the old writers, who ſpeak of nothing more, than that the right of judicature, which had belonged to the Senate, from the time of the Kings, was tranferred by *Gracchus* to the *Knights, in common with the Senators*; ſo that *three hundred* were to be taken from each order, out of whom the judges in all cauſes ſhould be choſen promiſcuouſly by lot [*e*]. This was the act of *C. Gracchus*, which continued in force to the time of *Sylla*; and it was

[*d*] Lib. 60.

[*e*] Μόνοι γὰρ ἔκριναν τὰς δίκας, [οἱ συγκλητικοὶ] καὶ διὰ τοῦτο φοβεροὶ τῷ δήμῳ καὶ τοῖς ἱππεῦσιν ἦσαν. ὁ δὲ τριακοσίους τῶν ἱππέων προσκατέλεξεν αὐλοῖς, ὅσι τριακοσίοις, καὶ τὰς κρισεῖς κοινὰς τῶν ἑξακοσίων ἐποίησε. Plutar. in Vit. C. Gracch.

this,

this, probably, which led that writer into his miſtake: but if any augmentation of the Senate had been made at the ſame time, it is certain, that it muſt have been made by the power of the people; which no man ever aſſerted ſo ſtrenuouſly, or carried ſo high, as this very *Gracchus*.

Theſe extraordinary creations of Senators, made with the conſent and approbation of the people, in their general aſſemblies, may be preſumed to have paſſed according to the forms of the conſtitution, and conſequently, point out to us the regular method of proceding in ordinary caſes. But the augmentation made by *Sylla*, as it enlarged the number of the Senators beyond what it had ever been, ſo it gave an admiſſion to many, who were unworthy of that honor [*f*]: and the general corruption of manners, intro-

[*f*] Judicum culpa atque dedecore etiam Cenſorium nomen, quod aſperius antea populo videri ſolebat, id nunc poſcitur, id jam populare atque plauſibile factum eſt. Cic. in Cæcil. Divinat. 3.

duced

duced by the confuſion and licence of thoſe turbulent times, made it neceſſary to revive the office and ancient diſcipline of the Cenſors [*g*], which had lain dormant for ſeventeen years paſt: in which the new Cenſors, *L. Gellius*, and *Cn. Cornelius Lentulus*, exerciſed their power with more ſeverity, than had ever been known before: for they left *ſixty four* out of the roll of the Senate; of whom *C. Antonius* was one, who, within ſeven years after, was choſen Conſul together with *Cicero*; and *P. Lentulus* another, who, as I have ſaid above, was choſen Prætor again after that diſgrace, and in that office, put to death for conſpiring with *Catiline*. *Cicero* ſpeaks of ſeveral more, who were degraded by the ſame Cenſors, for a charge of bribery and extortion in their judicial capacity; yet were all, not onely reſtored to the Senate, but acquitted alſo afterwards of

[*g*] Βυλήν τε γὰρ ἐκ τῶν ἐπιτυχόντων ἀνθρώπων συνέσησε, Σύλλα. Dionyſ. l. 5. 57.

thoſe

thoſe very crimes in a legal trial [*h*].

The ſeverity of this Cenſorſhip furniſhed a pretext not long after to *P. Clodius*, for procuring a law, to prohibit the Cenſors, from ſtriking any one out of the roll of the Senate, or diſgracing him in any manner, upon the report of common fame, or the notoriety of any crime, *till he had been formally accuſed and found guilty by the common judgement of both the Cenſors* [*i*]. *Cicero* frequently inveighs againſt this law, and reflects ſeverely on *Clodius*, for abridging or aboliſhing a ſalutary power, that had ſubſiſted four hundred years, and was neceſſary to ſupport the credit and dignity of the Senate [*k*]. But in this, perhaps, he

[*h*] Quos autem ipſe L. Gellius & Cn. Lentulus, duo Cenſores—furti & captarum pecuniarum nomine notaverunt: ij non modo in Senatum redierunt, ſed etiam illarum ipſarum rerum judiciis abſoluti ſunt. Cic. p. Cluent. 42.

[*i*] Τοῖς δὲ Τιμηταῖς ἀπηγόρευσε, μητ' ἀπαλεῖφειν ἐκ τίνος τέλους, μητ' ἀτιμάζειν μηδένα, χωρὶς ἢ εἴτις παρ' ἀμφοτέροις σφίσι κριθεὶς ἁλοίη. Dio. l. 37. p. 66. E.

[*k*] Ab eodem homine, in ſtupris inauditis, nefariiſque

he was influenced rather by his reſentment againſt his inveterate enemy, the author of it, than by any iniquity of the law itſelf, which ſeems to have been a reaſonable one in a free ſtate.

Now from all theſe facts and teſtimonies we may collect, what was the proper part of the Cenſors in the affair of creating Senators. For in the ordinary way of making them, they had nothing more to do, than to enroll the names of thoſe, who had born the public offices, ſince the laſt call or review of the Senate: and to degrade them, was to leave them onely out of the roll, when by the notoriety of their crimes, they had ſhewn themſelves unworthy of that high rank, to which the Roman people had advanced them. But that they had no right of creating them, is plain from the caſe of the *Flamen Dialis*; who upon the oppo-

ſariiſque verſato, vetus illa magiſtra pudoris & modeſtiæ, ſeveritas cenſoria ſublata eſt. In Piſon. 4. pr. Sext. 25.

ſition

ſition made to his claim, did not ſeek redreſs from the Cenſors, but the Tribuns; that is, from the people, as the ſoverein judges of the affair. Laſtly, the deſcription given by *Cicero*, of the Cenſorian juriſdiction in all it's branches, is exactly conformable to my hypotheſis: for he aſſigns them no part in the creation of Senators, nor any other power over that body, than what flowed from their right of inſpecting the manners of all the citizens. *Let them govern*, ſays he, *the morals of the city, and leave no ſtain or ſcandal in the Senate* [*l*].

But I muſt not forget to acknowledge, that, though the public magiſtrates had a right, by virtue of their office, to a place in the Senate, yet they could not, in a ſtrict ſenſe, be eſteemed complete Senators, till they had been enrolled by the Cenſors at the next luſtrum. This is the ſole

[*l*] Mores populi regunto: probrum in Senatu ne relinquunto. Cic. de Leg. 3. 3.

reaſon, for which the writers commonly aſcribe an abſolute power to the Cenſors in the caſe of making Senators; not conſidering, that the enrollment was but a matter of form, which was never denied or could be denied to any, but for ſome notorious immorality: and that a right of creating and degrading Senators by a plenitude of power, is a quite different thing, from that of enrolling onely thoſe, whom others had created, or rejecting them for a charge of crimes, which had rendered them unworthy of that honor, to which they had been raiſed by a different authority. For the part of enrolling or ſtriking out the names of Senators, was all that the Cenſors had to do in this affair, in which they were ſtill ſubject to the final judgement of the people, and liable to be obſtructed in the diſcharge of it, by any of the Tribuns [*m*].

[*m*] Dio. l. 37. p. 33. D. Cn. Tremellius Tribunus, quia lectus non erat in Senatum, interceſſit. Liv. 45. 15.

Beſides

Beſides this taſk of enrolling the Senators, and inſpecting their manners, it was a part likewiſe of the Cenſorian juriſdiction, *to let out to farm all the lands, revenues, and cuſtoms of the Republic; and to contract with artificers, for the charge of building and repairing all the public works and ædifices, both in Rome and the colonies of Italy* [*n*]. Now in this branch of their office, it is certain, that they acted merely under the authority of the people, and were prohibited by law, *to let out any of the revenues, except in the Roſtra, under the immediate inſpection, and in the very preſence of the people* [*o*]. In conſequence of

[*n*] Cenſores interim Romæ—Sarta tecta acriter & cum ſumma fide exegerunt, viam e foro Boario ad Veneris, & circa foros publicos & ædem Matris magnæ in Palatio faciendam locaverunt. Vectigal etiam novum ex Salaria annona ſtatuerunt. &c. Liv. 29. 37. Polyb. l. 6. 464. C.

[*o*] Cenſoribus Vectigalia locare, niſi in conſpectu populi Romani non licet. Cic. de Leg. Agrar. 1. 3. Vectigalia nuſquam locare licet, niſi ex hoc loco, [ex Roſtris] hac veſtrum frequentia. Ib. 2. 21.

which, when *Fulvius Flaccus*, one of the Cenſors, was ordering ſome great and expenſive works, more arbitrarily, than the law would regularly warrant, his Collegue *Poſtumius* refuſed to join with him, and declared, that he would not engage himſelf in any contracts, to the waſt of the public treaſure, *without an expreſs order of the Senate and the people, whoſe treaſure it was* [*p*]. If the Cenſors then, in theſe inferior articles of their adminiſtration, were obliged to act under the immediate controul and inſpection of the people, and as miniſters onely of the people's will, we may reaſonably infer, that they could not act in any other capacity, in the more important affair, of making and unmaking Senators.

Again, in the general cenſus and review of the city, held by them every five years, though every ſingle citizen

[*p*] Alter ex iis Fulvius Flaccus, (nam Poſtumius nihil niſi Senatus Romani populive juſſu, ſe locaturum ipſorum pecunia dicebat) Jovis ædem Piſauri & Fundis, &c. Liv. 41. 27.

was

was particularly ſummoned and enrolled by name in his proper tribe, as a freeman of *Rome*, yet that ſolemn enrollment, as *Cicero* tells us, *did not confirm any man's right to a citizenſhip, but ſignified onely, that he had paſſed for a citizen at that time* [*q*]. Becauſe the proper power of determining that right reſided always in the people [*r*]: whence we may conclude likewiſe by a parity of reaſon, that the Cenſorian roll of the Senate did not either confer or take away any one's right to that high order, unleſs it were confirmed, either by the preſumed conſent, or expreſs command of the Roman people.

But though the magiſtrates of the city had a right to a place and vote in the Senate, as well during their office,

[*q*] Sed quoniam Cenſus non jus civitatis confirmat, ac tantummodo indicat, eum, qui ſit cenſus, ita ſe jam tum geſſiſſe pro cive. Cic. pr. Arch. 5.

[*r*] Mutines etiam Civis Rom. factus, rogatione ab Tribunis pl. ex auctoritate Patrum, ad plebem lata. Liv. x. 52.

as after it, and before they were put upon the roll by the Cenſors, yet they had not probably a right, to ſpeak or debate there on any queſtion, at leaſt in the earlier times of the Republic. For this ſeems to have been the original diſtinction between them and the ancient Senators, as it is plainly intimated in the *formule* of the Conſular edict, ſent abroad to ſummon the Senate, which was addreſſed *to all Senators, and to thoſe, who had a right to vote in the Senate* [s]. From which diſtinction, theſe laſt, who had onely a right to vote, were called, by way of ridicule, *Pedarians*; becauſe they ſignified their votes by their feet, not their tongues; and upon every diviſion of the houſe, went over to the ſide of thoſe, whoſe opinion they ap-

[s] Conſules edixerunt, quoties in Senatum vocaſſent, uti *Senatores, quibuſque in Senatu dicere ſententiam liceret*, ad portam Capenam convenirent. Liv. 23. 32. it. 36. 3. Feſtus in voc. Senatores—A. Gell. l. 3. 18.

proved.

proved [*t*]. It was in alluſion to this old cuſtom, which ſeems however to have been wholly dropt in the later ages of the Republic, that the mute part of the Senate continued ſtill to be called by the name of *Pedarians*, as we learn from *Cicero*, who, in giving an account to *Atticus*, of a certain debate and decree of the Senate upon it, ſays, that *it was made with the eager and general concurrence of the Pedarians, though againſt the authority of all the Conſulars* [*v*].

From the diſtinction, ſignified above, in *the formule* of ſummoning the Senate, it may not perhaps be improbable, that on certain urgent occaſions, in which an extraordinary diſpatch or

[*t*] Non pauci ſunt qui arbitrantur *Pedarios* Senatores appellatos, qui ſententiam in Senatu non verbis dicerent, ſed in alienam ſententiam pedibus irent, &c. Vid. A. Gell. ibid.

Ita appellatur, quia tacitus tranſeundo ad eum, cujus ſententiam probat, quid ſentiat, indicat. Feſt. in Pedarius—

[*v*] Eſt enim illud S. C. ſumma Pedariorum voluntate, nullius noſtrum auctoritate factum. ad Att. l. 19.

ſecrecy was required in their counſils, the latter part of the edict might be omitted, and none but the old and proper Senators called to the meeting: and if this was the caſe, as ſome writers have imagined [*x*], it will clear up the difficulty of a ſtory in *Valerius Maximus*, which has greatly perplexed all thoſe, who have treated this quæſtion, and is thus related; "*Q. Fabius Maximus*, on his return from "the Senate, happening to meet with "*P. Craſſus*, told him, by way of "news, what had been reſolved ſecretly about the *Punic war*, remembring, that *Craſſus* had been "*Quæſtor* three years before, and not "knowing, that he had not yet been "put upon the roll of the Cenſors, "and ſo had no right to be in the "Senate: for which *Fabius* was ſeverely reprimanded by the Conſuls [*y*]. For *Valerius* muſt not

[*x*] Vid. Pighii Annales. Tom. 1. p. 72.
[*y*] Val. Max. 2. 2.

be

be underſtood to aſſert, that the *Quæſtors* had no right to an admiſſion into the Senate, till they were enrolled by the Cenſors: ſince it appears from unqueſtionable facts and teſtimonies, drawn from the practice, at leaſt, of the later ages of the Republic, that they had not onely an entrance and vote in it, but a free liberty of ſpeaking alſo, or debating on all quæſtions: ſo that I ſee no way of accounting for the offence committed by *Fabius*, in giving part of the deliberation to *P. Craſſus*, but that it was one of that *ſecret* kind [z], to which the old Se-

[z] *J. Capitolinus* mentions a decree of the Senate of this *ſecret kind*, which he calls S. C. *tacitum*, and ſays, that the uſe of them among the ancients was derived from the neceſſities of the public, when upon ſome imminent danger from enemies, the Senate was either driven to ſome low and mean expedients, or to ſuch meaſures, as were proper to be executed before they were publiſhed, or ſuch as they had a mind to keep ſecret even from friends; on which occaſions they commonly recurred to a *tacit decree*, from which they excluded their clerks and ſervants, performing that part themſelves, leſt any thing ſhould get abroad. Capitolin. de Gordianis. c. 12. In the early

nators onely uſed to be ſummoned in the early ages.

But that the *Quæſtors* had a direct admiſſion into the Senate, and were ſtiled and treated as Senators, and had a liberty alſo of ſpeaking in their turn, as well as the reſt, is evident, as I have ſaid, from many clear facts and teſtimonies. For inſtance; *C. Marius*, as the ſame *Valerius* ſays, not being able to procure any magiſtracy in *Arpinum*, his native city, ventured to ſue for the *Quæſtorſhip* at *Rome*, which he obtained at laſt *after many repulſes, and ſo forced his way into the Senate, rather than came into it* [*a*]. *Cicero*, after he had been *Quæſtor*, being elected *Ædile*, as ſoon as he was capable,

early times of the Republic there are ſeveral inſtances mentioned by hiſtorians, of ſuch private meetings of the Senate, ſummoned by the Conſuls to their own houſes, to which none but the old or proper Senators were admitted, and of which the Tribuns uſually complained. Vid. Dionyſ. l. x. 40. l. xi. 55, 57.

[*a*] Patientia deinde repulſarum, irrupit magis in Curiam quam venit. Id. l. 6. 9. 14.

declares

declares in one of his ſpeeches, how by that advancement, he had gained an *higher rank and earlier turn of delivering his opinion in the Senate* [*b*]: which implies, that he had a right of ſpeaking there before, when *Quæſtor*, though later onely in point of time, and after the other magiſtrates. In another ſpeech, he ſtiles *P. Clodius*, a Senator, while he was onely of *Quæſtorian* rank [*c*]: and in a congratulatory letter to *Curio* at *Rome*, upon his election to the Tribunate, taking occaſion to renew a requeſt, which he had made to him in former letters, when he had onely been *Quæſtor*, he ſays, *that he had aſked it of him before, as of a Senator of the nobleſt birth, and a youth of the greateſt intereſt, but now of a Tribun of the people, who had the power to grant what*

[*b*] Antiquiorem in Senatu ſententiæ dicendæ locum. in Verr. 5. 14.

[*c*] Adoptat annos viginti natus Senatorem. pr. Dom. 13, 14.

he

he aſked [*d*]. Laſtly, *M. Cato*, as *Plutarch* writes, when he was *Quæſtor* of the city, never failed to attend the Senate, for fear, that any thing ſhould paſs in his abſence to the detriment of the public treaſure of which he was then the guardian [*e*]: which ſeems to imply, that he was not onely a Senator in virtue of his office, but had the liberty of acting or ſpeaking there, if he had found occaſion.

Before I put an end to my argument, I muſt add a word or two, on what your Lordſhip has incidentally touched, *the number of the Senate, and the qualifications of a certain age and eſtate*, required in it's members by law.

As to it's number, it is commonly

[*d*] Itemque petivi ſæpius per litteras, ſed tum quaſi a Senatore Nobiliſſimo—nunc a Tribuno plebis. Ep. Fam. 2. 7.

[*e*] Plutar. in Vit. Caton.

Cicero likewiſe in reckoning up the number of Senators, who were in *Pompey*'s camp, diſtinguiſhes them by their ſeveral ranks, of *Conſular*, *Prætorian*, *Ædilitian*, *Tribunitian*, and *Quæſtorian Senators*. Philip. 13. 14.

ſuppoſed to have been limited to *three hundred*, from the time of the Kings, to that of the *Gracchi*. But this muſt not be taken too ſtrictly: it generally had that number, or thereabouts, and upon any remarkable deficiency, was filled up again to that complement by an extraordinary creation. But as the number of the public magiſtrates increaſed with the increaſe of their conqueſts and dominions, ſo the number of the Senate, which was ſupplied of courſe by thoſe magiſtrates, muſt be liable alſo to ſome variation. *Sylla*, as we have ſeen above, when it was particularly exhauſted, added *three hundred* to it at once from the Equeſtrian order: which might probably raiſe the whole number to about *five hundred*: and in this ſtate it ſeems to have continued, till the ſubverſion of their liberty by *J. Cæſar*. For *Cicero*, in an account of a particular debate, in one of his letters to *Atticus*, mentions *four hundred and fifteen* to have been preſent

ſent at it, which he calls *a full houſe* [*f*].

That there was a certain age alſo required for a Senator, is often intimated by the old writers, tho' none of them have expreſſly ſignified what it was. The legal age for entring into the military ſervice, was ſettled by *Servius Tullius* at ſeventeen years [*g*]: and they were obliged, as *Polybius* tells us, to ſerve ten years in the wars, before they could pretend to any civil magiſtracy [*b*]. This fixes the proper age of ſuing for the *Quæſtorſhip*, or the firſt ſtep of honor, to the twenty eighth year: and as this office gave an admiſſion into the Senate, ſo the generality of the learned ſeem to have given the ſame date to the Senatorian age. Some writers indeed, on the au-

[*f*] Cum decerneretur frequenti Senatu — ut Conſules populum cohortarentur ad rogationem accipiendam, homines ad xv Curioni nullum S. C. facienti aſſenſerunt; ex altera parte facile cccc. fuerunt. ad Att. l. 1. 14.

[*g*] A. Gellius x. 28.

[*b*] Polyb. de Inſtitut. rei milit. l. 6. p. 466.

thority

thority of *Dion Caſſius*, have imagined it to be *twenty five years*: not reflecting, that *Dio* mentions it there as a regulation onely, propoſed to *Auguſtus*, by his favorite *Mæcenas* [*i*].

But for my part, as far as I am able to judge, from the practice of the Republic in it's later times, I take the *Quæſtorian age*, which was the ſame with the *Senatorian*, to have been *thirty years* complete. For *Cicero*, who declares in ſome of his ſpeeches, that he had acquired all the honors of the city, without a repulſe in any, and each in his proper year, or as ſoon as he could pretend to it by law, yet did not obtain the *Quæſtorſhip*, till he had paſſed through his thirtieth year [*k*]: and when *Pompey* was created Conſul, in an extraordinary manner, and by a ſpe-

[*i*] Vid. Dio. l. 52. p. 477. Lipſ. de magiſtratib. Rom.

[*k*] *Cicero* was born A. U. 647. obtained the Quæſtorſhip A. U. 677. which he adminiſtered the year following in *Sicily*. See Life of *Cicero*. Vol. 1. p. 57. Quarto. Pighii Annales.

cial diſpenſation, in his *thirty ſixth* year, without having born any of the ſubordinate dignities, *Cicero* obſerves upon it, that he was choſen into the higheſt magiſtracy, before he was qualified by the laws to hold even the loweſt [*l*]: by which he means the *Ædileſhip*; which was the firſt office, that was properly called a magiſtracy, and what could not regularly be obtained, till after an interval of *five years* from the *Quæſtorſhip*.

But my notion ſeems to be particularly confirmed by the tenor of certain laws, given at different times by the Roman governors, to foreign nations, relating to the regulation of their particular Senates: for the *Haleſini*, a people of *Sicily*, as the ſtory is told by *Cicero*, " having great quarrels among " themſelves, about the choice of their " Senators, petitioned the Senate of

[*l*] Quid tam ſingulare, quam ut legibus ſolutus ex S. conſulto Conſul ante fieret, quam ullum alium magiſtratum per leges capere licuiſſet. Cic. pr. Lege Manil. 21.

" *Rome*,

" *Rome*, to give them ſome laws con-
" cerning it. Upon which the Senate
" decreed, that their Prætor *C. Claudi-*
" *us* ſhould provide laws for them ac-
" cordingly; in which laws many
" things, he ſays, were enacted, con-
" cerning their age; that none, under
" thirty years: none, who exerciſed any
" trade, none, who had not an eſtate
" to a certain value, ſhould be capable
" of the Senate." *Scipio* likewiſe, as he tells us, gave laws of the ſame kind, and with the ſame clauſes in them, to the people of *Agrigentum* [*m*]: and laſtly, *Pliny* mentions a law of *Pompey the Great*, given on a like occaſion to the *Bithynians*, importing, " that none
" ſhould hold any magiſtracy, or be
" admitted into their Senate under the
" age of thirty; and that all, who had

[*m*] C. Claudius—leges Haleſinis dedit: in quibus multa ſanxit de ætate hominum, ne qui minor triginta annis natu, &c.

Agrigentini de Senatu cooptando, Scipionis leges antiquas habent. in quibus & eadem illa Sancta ſunt, &c. In Verr. 2. 49.

" born

" born a magiſtracy, ſhould be of " courſe in the Senate [*n*]." All which clauſes clearly indicate, from what ſource they were derived, and ſhew, what every one would readily imagine, that a Roman magiſtrate would naturally give them Roman laws.

Cicero ſays, that the laws concerning the age of magiſtrates were not very ancient; and were made, to check the forward ambition of the nobles, and *to put all the citizens upon a level in the purſuit of honors* [*o*]: and *Livy* tells us, that *L. Villius*, a Tribun of the people, was the firſt, who introduced them, A. U. 573, and acquired by it the ſurname of *Annalis* [*p*]: But

[*n*] Cautum eſt, Domine, Pompeii lege, quæ Bithynis data eſt, nequis capiat magiſtratum, neve ſit in Senatu, qui minor annis xxx ſit. & ut qui ceperint magiſtratum, ſint in Senatu. Ad Trajan. Ep. l. x. 83.

Graviſſimum autem eſt, cum ſuperior factus ſit ordine, inferiorem eſſe fortuna. Fam. 13. 5.

[*o*] Itaque majores noſtri, veteres illi admodum antiqui, leges annales non habebant. &c. Phil. 5. 17.

[*p*] Ego anno rogatio primum lata eſt ab *L. Villio*, Tribuno plebis, quot annos nati quemque magiſtratum

But long before this, we find an intimation of ſome laws, or cuſtoms of that kind, ſubſiſting in *Rome*: and in the very infancy of the Republic, when the Tribuns were firſt created, the Conſuls declared in the Senate, that they would ſhortly correct the petulance of the young nobles, *by a law, which they had prepared, to ſettle the age of the Senators* [*d*].

There was another qualification alſo required, as neceſſary to a Senator; *an eſtate*, proper to ſupport his rank; the proportion of which was ſettled by the law: but I do not any where find, when this was firſt inſtituted, nor even what it was, in any author before *Suetonius*; from whom we may collect, that it was ſettled at *eight hundred ſeſtertia*, before the reign of *Au-*

iſtratum peterent, caperentque. inde cognomen familiæ inditum, ut Annales appellarentur. Lib. 40. 44.

[*q*] Ἀλλὰ καὶ εἰς τὸ λοιπὸν ἀνείρξομεν αὐτῶν ἀκοσμίαν νόμῳ, τάξαντες ἀριθμὸν ἐτῶν ὃν δεήσει τὸν βουλεύσοντας ἔχειν. Dionyſ. l. 6. 66.

Senatorium gradum cenſus adſcendere fecit.

guſtus [*r*]: which are computed to amount to between *ſix and ſeven thouſand pounds* of our money; and muſt not be taken, as it is by ſome, for an annual income, but the whole eſtate of a Senator, real and perſonal, as eſtimated by the ſurvey and valuation of the Cenſors.

This proportion of wealth may ſeem perhaps too low, and unequal to the high rank and dignity of a Roman Senator; but it muſt be conſidered onely as the loweſt, to which they could be reduced: for whenever they ſunk below it, they forfeited their ſeats in the Senate. But as low as it now appears, it was certainly ſufficient, at the time when it was firſt ſettled, to maintain a Senator ſuitably to his character, without the neceſſity of recurring *to any trade or ſordid arts of gain*, which were likewiſe prohibited to him by the

[*r*] Senatorum cenſum ampliavit; [Auguſtus] ac pro octingentorum millium ſumma, duodecies H S taxavit, ſupplevitque non habentibus. Sueton. in Aug. c. 41.

laws

laws [*s*]. But the conſtitution itſelf does not ſeem to have been very ancient; for we may eaſily imagine, that in thoſe earlier days, when the chief magiſtrate was ſometimes *taken from the plough* [*t*], and *Corn. Rufinus*, who

[*s*] Inviſus Patribus ob novam legem, quam Q. Claudius Trib. pl. adverſus Senatum, uno Patrum adjuvante, C. Flaminio, tulerat, ne quis Senator, quive Senatoris pater fuiſſet, maritimam navem, quæ plus quam trecentarum amphorarum eſſet, haberet. id ſatis habitum ad fructus ex agris vectandos. quæſtus omnis Patribus indecorus viſus. Liv. 21. 63. Noli metuere, Hortenſi, ne quæram, qui licuerit navem ædificare Senatori. Cic. Verr. 5. 18.

N. B. It is certain, that the Senators generally poſſeſſed a much larger proportion of wealth, than what is computed above: for in the fifth year of the ſecond Punic war, A. U. 539. it was decreed by the Senate, that every citizen, who, at the preceding Cenſus, or general taxation of the city, was found to be worth from 400 l. to 800 l. of our money, ſhould furniſh one ſailor with ſix months pay towards manning the fleet; that thoſe, who were rated from 800 l. to 2400 l. ſhould furniſh three ſailors, with a year's pay; that thoſe, who were rated from 2400, to 8000 l. ſhould furniſh five ſailors; that all, who were rated above that ſum, ſhould furniſh ſeven; and that all Senators ſhould furniſh eight, with a year's pay. Liv. 24. 11.

[*t*] Si illis temporibus natus eſſes, cum ab aratro arceſſebantur, qui Conſules fierent. Cic. pr. Roſc. Amer. 18.

had been *Dictator and twice Conſul*, was expelled the Senate by *C. Fabricius* the Cenſor, A. U. 477, becauſe he had *ten pounds of ſilver plate in his houſe* [*v*], no particular preference could be given to wealth in the choice of a Senator: and we find *Pliny* accordingly lamenting the unhappy change, *when their Senators, their Judges and their Magiſtrates came to be choſen by the value of their eſtate, ſince from that moment, all regard began to be loſt for every thing, that was truly eſtimable and laudable in life* [*x*]. This qualification of a Senatorian eſtate is referred to by *Cicero* in one of his letters, written in the time of *J. Cæſar*'s adminiſtration, where he begs of one of his friends then in power, " not to ſuffer certain lands " of *Curtius*, to be taken from him for

[*v*] Ab eo Cornelium Rufinum duobus Conſulatibus & Dictatura ſpecioſiſſime functum, quod decem pondo argentea vaſa comparaſſet, in ordine Senatorio retentum non eſſe.—Val. Max. l. 2. 9. A. Gell. 17. 21.

[*x*] Poſtquam Senator cenſu legi cœptus—peſſum iere vitæ prætia---Plin. Præem. in lib. 14. Hiſt. N.

" the uſe of the ſoldiers, becauſe with-
" out that eſtate, *he could not hold the*
" *rank of a Senator*, to which *Cæſar*
" himſelf had advanced him [*y*]."

It appears, from what has been dropt in the courſe of this argument, that there was ſome law alſo ſubſiſting from the earlieſt times, concerning the extraction and deſcent of Senators; injoining, that it ſhould always be ingenuous; and as their morals were to be clear from all vice, ſo their birth likewiſe, from any ſtain of baſe blood: in conſequence of which, when *Appius Claudius*, in his Cenſorſhip, attempted to introduce *the grandſons of freed ſlaves* into the Senate, they were all, as we have ſeen above, immediately turned out again. For the *Romans* were ſo particularly careful, to preſerve even their common citizens from any mixture of ſervile blood, that they prohibited all

[*y*] Hoc autem tempore eum Cæſar in Senatum legit: quem ordinem ille, iſta poſſeſſione amiſſa, vix tueri poteſt. Ep. Fam. 13. 5.

marriages between them and freed ſlaves, or their children: and it was decreed, as a ſpecial privilege and reward to one *Hiſpala*, *of libertine condition*, for her diſcovery of the impieties of the *Bacchanalian myſteries*, *that a citizen might take her to wife*, *without any diſgrace and diminution of his rights* [z]. Theſe diſtinctions indeed began to be diſregarded towards the end of the Republic, with reſpect to the ordinary citizens, but were kept up to the laſt, with regard to the Senate. For *Cn. Lentulus* in his Cenſorſhip abovementioned, turned *Pompilius* out of the Senate, becauſe *his grandfather was a ſlave* made free: yet he allowed him his rank at the public ſhews, with all the outward ornaments of a Senator [a]: and the *Papian* law, made in the end of

[z] Utique ei ingenuo nubere liceret. neu quid ei qui eam duxiſſet, ob id fraudi ignominiæve eſſet. Liv. 39. 19.

[a] Nam Popillium, quod erat Libertini filius, in Senatum non legit: locum quidem Senatorium ludis, & cetera ornamenta reliquit, & eum omni ignominia liberat. Cic. pr. Cluen. 47.

Au-

Auguſtus's *reign*, permits all the citizens, excepting *Senators and their children*, to take *wives of libertine condition* [*b*].

Theſe were ſome of the laws, by which the Cenſors were obliged to act, in the enrollment of the new, or the omiſſion of old Senators: and when we read of any left out, without an intimation of their crime, it might probably be, for the want of one or other of theſe legal or cuſtomary qualifications.

The Cenſors continued in their office for eighteen months, and if we ſuppoſe them to have been created onely every five years, the office muſt lie dormant for three years and an half. This is agreeable to what the generality of writers have delivered to us of the Cenſus; that it was celebrated every *fifth year*: and as it was accompanied always by a *luſtration* of the people, ſo the word, *Luſtrum*, has conſtantly been taken, both by the ancients and mo-

[*b*] Vid. Pighii Annal. A. U. 761.

derns, for a term of *five years*. Yet if we enquire into the real ſtate of the caſe, we ſhall find no good ground for fixing ſo preciſe a ſignification to it; but on the contrary, that *the Cenſus and Luſtrum* were, for the moſt part, held irregularly and uncertainly, at very different and various intervals of time, as the particular exigencies of the ſtate required. This is evident, not only from the teſtimonies of the old writers, but from authentic records and monuments of the fact, *the Old Faſti*, inſcribed on marble, and ſtill preſerved in the *Capitol of Rome*; exhibiting a ſucceſſion of the Roman magiſtrates, with a ſummary of their acts, from the earlieſt ages of the Republic.

For example, *Servius Tullius*, who firſt inſtituted the Cenſus and Luſtrum, and afterwards held four of them, began to reign A. U. 175, and reigned forty four years. *Tarquinius Superbus*, who ſucceeded him, held no Cenſus at all.

The

The Conſuls *P. Valerius* and *T. Lucretius* revived the inſtitution of *Servius*, and held the fifth Cenſus A. U. 245, and the Capitoline marbles, which are defective through the ſeven firſt Luſtrums, mark the eighth to have happened A. U. 279, ſo that the three firſt, which were held by the Conſuls, carry us through an interval of thirty four years.

The Cenſors were created A. U. 311, in which year they celebrated the eleventh Luſtrum; which gives alſo near the ſame interval to the three laſt, which had been held by the Conſuls.

The twentieth Luſtrum, according to the Capitoline marbles, falls A. U. 390: whence we ſee, that under the Cenſors, who were created for the very purpoſe, of adminiſtring the Cenſus and Luſtrations of the people, yet the nine firſt of their Luſtrums, one with another, take up each of them very near nine years.

The

The laſt Luſtrum, during the liberty of the Republic, was held by the Cenſors *Appius Claudius* and *L. Piſo*, A. U. 703, and was the ſeventy firſt: ſo that if we compute from the eleventh, or the firſt held by the Cenſors, to the laſt by *Appius Claudius*, the intervening ſixty will each of them contain about ſix years and an half.

This is the real ſtate of the caſe, as it is deduced from the moſt authentic records: from which we ſee, that tho' time and cuſtom have fixed the notion of a Quinquennium or term of five years, to the word, Luſtrum, yet there is no ſufficient ground for it in fact or the nature of the thing.

I have now drawn out every thing, which I took to have any relation to my ſubject, or to be of any uſe towards illuſtrating the genuin ſtate of the Roman Senate, from it's firſt inſtitution, to the oppreſſion of it's liberty: and am perſuaded, if I do not flatter my ſelf too much, that through every period

riod of it's hiſtory, under the *Kings*, *the Conſuls, and the Cenſors*, I have traced out from the beſt authorities, one uniform ſcheme of the people's power and abſolute right over this affair, from one end to the other. But as I began my argument with the ſame notion, with which I now end it, ſo it is poſſible, that, like all others, who ſet out with an hypotheſis, I might perhaps have a kind of biaſs upon me, without being ſenſible of it myſelf; ſo as to have given a greater force to ſome facts, than they will eaſily bear, in order to draw them to my particular ſenſe. If this be the caſe, as I am ſure, that it will not eſcape your Lordſhip's obſervation, ſo I ſhall have a pleaſure to be corrected by your leſs biaſſed judgment; ſince in this, as well as in all my other enquiries, truth is the only fruit that I ſeek, or deſire to reap from my labor.

A

TREATISE

ON THE

ROMAN SENATE.

PART the SECOND.

WHAT I have hitherto been diſputing on the ſubject of the Roman Senate, was deſigned onely, to explane the method of creating Senators, or filling up the vacancies of that body. But as that reaches no farther than to it's exterior form, ſo the reader may probably wiſh, that, before I diſmiſs the argument, I would introduce him likewiſe into the inſide of it, and give him a view of their manner of proceding within doors; which might inable him to form a more adæquate idea of an aſ-

ſembly

ſembly of men, which was unqueſtion-
bly the nobleſt, and moſt auguſt, that
he world has ever ſeen, or ever will
ee: till another empire ariſe, as widely
xtended, and as wiſely conſtituted, as
hat of *Old Rome*. For this purpoſe, I
ave drawn out into this ſecond part,
nd diſtributed under proper heads,
hatever I had collected on that ſub-
ect from my own obſervation; which
have taken care to ſupport and inlarge
very where, as there was occaſion, from
he more copious collections of *P. Ma-
utius* and *C. Sigonius*, who, of all the
oderns, ſeem to have had the moſt
xact, as well as the moſt extenſive
nowledge of the affairs of ancient
Rome. I have not however been a mere
ompiler, or tranſlator of the works of
hoſe learned men, but while I make
free uſe of them, have taken a liberty,
o which every one has a right, who
raws from the ſame original authori-
es, of differing from them in ſeveral
oints, about the force and application
of

of thoſe authorities. But before I enter into a deſcription of the forms and methods of proceding in the Roman Senate, I think it neceſſary in the firſt place, to give a ſummary account of their power and juriſdiction, in order to ſhew what a ſhare they really had in the adminiſtration of the government, and on what important affairs their deliberations were employed.

SECT. I.

Of the power and juriſdiction of the Roman Senate.

I HAVE already ſhewn, how by the original conſtitution of the government, even under the Kings, the collective body of the people was the real ſoverein of *Rome*, and the dernier reſort in all caſes. But their power, though ſupreme and final, was yet qualified by this check, that they could not regularly enact any thing *which had not been previouſly conſider-*

ed

ed, and approved by the Senate [*a*]. This was the foundation of the Senatorian power, as we find it ſet forth, in one of their firſt decrees, concerning the choice of a King, where it is declared, *that an election made by the people ſhould be valid; provided, that it was made with the authority of the Senate* [*b*]: and not onely in this caſe, but in all others, the ſame rule was obſerved for many ages; and when one of the Tribuns, in contempt of it, ventured to propound a law to the people, on which the Senate had not firſt been

[*a*] Δύνασθε δὲ ἂν κ᾽ αὐτοὶ τοῦτο μαρτυρεῖν, ὅτι ἐξ ἧς τήνδε τὴν πόλιν ἔκλισαν ὑμῶν οἱ πρόγονοι τοῦτο τὸ γέρας ἔχουσα ἡ βουλὴ διαλελέλεκεν, κ᾽ οὐθὲν ὠφέλει ὁ δῆμος ὅτι μὴ προεβουλεύσειεν ἡ βουλή, ἅτε ἐπέκρινεν, ἅτε ἐπεψήφισεν, οὐχ ὅτι νῦν, ἀλλ᾽ ἔδει ἐπὶ τῶν βασιλέων. Dionyſ. Hal. l. 7. 38. Ed. Oxon.

[*b*] Patres-decreverunt, ut eum populus regem juſſiſſet, id ſic ratum eſſet, ſi Patres auctores fierent. &c. Liv. 1. 17.

Numam Pompilium—populi juſſu, Patribus auctoribus Romæ regnaſſe. Id. 4. 3.

Inde Tullum Hoſtilium—Regem populus juſſit, Patres auctores facti. Id. 1. 22. Tum enim non gerebat is magiſtratum, qui ceperat, ſi Patres auctores non erant facti. Cic. pr. Plancio 3.

conſulted,

conſulted, all his Collegues interpoſed and declared, that *they would not ſuffer any thing to be offered to the ſuffrage of the citizens, till the fathers had paſſed a judgement upon it* [*c*]. And this indeed continued to be the general way of proceding in all quiet and regular times, from the beginning of the Republic to the end of it: and the conſtant ſtile of the old writers, in their accounts of the public tranſactions is, that the Senate *voted or decreed*, and the people *commanded* ſuch and ſuch an act [*d*].

Since nothing therefore, which related to the government, could be brought before the people, till it had been examined by the Senate, ſo on many occaſions, where haſt perhaps or ſecrecy was required, and where the determinations of the Senate were ſo

[*c*] Per interceſſionem Collegarum, qui nullum Plebiſcitum, niſi ex auctoritate Senatus, ſe perferri paſſuros oſtenderunt, diſcuſſum eſt. Id. 4. 49.

[*d*] Senatus eam pacem ſervandam cenſuit, & paucos poſt dies, populus juſſit. Id. 37. 55.

Ex auctoritate Patrum, juſſu populi, bellum Faliſcis indictum eſt. Id. x. 45.

juſt

juſt and equitable, that the conſent of the people might be preſumed and taken for granted, the Senate would naturally omit the trouble, of calling them from their private affairs, to an unneceſſary attendance on the public; till by repeated omiſſions of this kind, begun at firſt in trivial matters, and proceding inſenſibly to more ſerious, they acquired a ſpecial juriſdiction and cognizance in many points of great importance, to the excluſion even of the people; who yet, by the laws and conſtitution of the government, had the abſolute dominion over all. For example;

1. They aſſumed to themſelves the guardianſhip and ſuperintendence of the public religion; ſo that no new God could be introduced, nor Altar erected, nor the Sibylline books conſulted, without their expreſs order [*e*].

[*e*] Ex auctoritate Senatus latum ad populum eſt, equis Templum aramve injuſſu Senatus aut Trium-norum pl. majoris partis dedicaret. Liv. 9. 46.

Vetus

2. They held it as their prerogative, to settle the number and condition of the foreign provinces, that were annually assigned to the magistrates, and to declare, which of them should be Consular and which Prætorian provinces [*f*].

3. They had the distribution of the public treasure, and all the expences of the government; the appointment of stipends to their generals, with the number of their lieutenants and their troops, and of the provisions and cloathing of their armies [*g*].

4. They

Vetus erat decretum, ne qui Deus ab Imperatore consecraretur, nisi a Senatu probatus. ut M. Æmilius de suo Alburno. Tertull. Apol. 5.

Quamobrem Sibyllam quidem sepositam habeamus, ut injussu Senatus ne legantur quidem libri. Cic. de Div. 54.

Quoties Senatus Decemviros ad libros ire jussit. ib. 1. 48.

[*f*] Tu provincias Consulares—quas C. Gracchus non modo non abstulit ab Senatu, sed etiam necesse esset, quotannis constitui per Senatum, legi sanxit. Cic. pr. Dom. 9. Vid. in Vatin. 15.

[*g*] Καὶ μὴν ἡ σύγκλητος πρῶτον μὲν ἔχει τὴν τοῦ τ[illegible] μιείου κυρίαν. καὶ γὰρ τῆς εἰσόδου πάσης αὕτη κρατεῖ, καὶ τ[illegible] ἐξόδου παραπλησίως. Polyb. l. 6. 461.

4. They nominated all embaſſadors ſent from *Rome*, out of their own body, and received and diſmiſſed all, who came from foreign ſtates, with ſuch anſwers as they thought proper [*h*].

5. They had the right of decreeing all ſupplications or public thankſgivings, for victories obtained, and of conferring the honor of an ovation or triumph, with the title of Emperor on their victorious generals [*i*].

6. It was their province, to inquire into public crimes or treaſons either in

Ἄνευ δὲ τοῦ τῆς συγκλήτου βουλήματος, οὔτε σῖτος, οὔτε ἱμάτισμος, οὔτε ὀψώνια δύναται χορηγεῖσθα τοῖς στρατοπέδοις, &c. id. 463. Senatus, in auguſtiis ærarii, Cæſaris exercitum ſtipendio affecit. Cic. pr. Balb. 27.

[*h*] Ne hoc quidem Senatus relinquebas, quod nemo unquam ademit, ut Legati ex ejus ordinis auctoritate legarentur—quis Legatos unquam audivit ſine Senatus conſulto? in Vatin. 15. Vid. Polyb. 461.

[*i*] Senatus in quatriduum, quod nullo ante bello ſupplicationes decernit. Liv. 5. 23. etenim cui vicinti his annis ſupplicatio decreta eſt, ut non Imperator appellaretur? Cic. Phil. 14. 4, 5.

Τοὺς γὰρ προσαγορευμένους παρ' αὐτοῖς θριάμβους—τούτους δύναται χειρίζειν ὡς πρέπει, ποτὲ δὲ τὸ παράπαν οὐδὲ συντελεῖν, ἐὰν μὴ τὸ συνέδριον συγκατάθηται. Polyb. ibid.

Rome, or the other parts of *Italy*; and to hear and determine all diſputes among the allied and dependent cities [*k*].

7. They exerciſed a power, not only of interpreting the laws, but of abſolving men from the obligation of them, and even of abrogating them [*l*].

8. In the caſe of civil diſſentions or dangerous tumults within the city, they could arm the Conſuls by a vote with abſolute power, to deſtroy and

[*k*] Ὁμοίως γὰρ ὅσα τῶν ἀδικημάτων τῶν κατ' Ἰταλίαν προσδεῖσθαι δημοσίαι ἐπισκέψεως—τῇ συγκλήτῳ μέλει περὶ τούτων. Polyb. 461.

Conſulem—res in Etruria tenuerunt, quæſtione ex S. C^to^, de conjurationibus principum habente Liv. 30. 26. Q. Fabium Labeonem arbitrum Nolanis & Neapolitanis de finibus agri a Senatu datum Cic. Off. 1. x.

[*l*] Senatus quidem, cujus eſt graviſſimum judicium de jure legum. [Cic. pr. Dom. 27.] Quatuor omnino genera ſunt, in quibus per Senatum, more majorum, ſtatuatur aliquid de legibus. unum eſt, juſmodi, placere legem abrogari—Alterum, quæ lata eſſe dicatur, ea non videri populum teneri. Cornel. 1. vid. Cic. pr. leg. Manil. 21. de Pompe legibus ex Senatus conſulto ſoluto. De Scipionis legibus ſolutis. Val. Max. 8. 15. it. Cic. Phil. 5.

put to death, without the formality of a trial, all ſuch citizens, as were concerned in exciting them [*m*].

9. They had a power, to prorogue or poſtpone the aſſemblies of the people; to decree the title of King, to any Prince, whom they pleaſed; thanks and praiſe, to thoſe, who had deſerved them; pardon and reward, to enemies or the diſcoverers of any treaſon; to declare any one an enemy by a vote; and to preſcribe a general change of habit to the city, in caſes of any imminent danger or calamity [*n*].

[*m*] Senatus decrevit, darent operam Conſules, nequid detrimenti Reſpub. caperet. ea poteſtas per Senatum, more majorum, Magiſtratui maxima permittitur: exercitum parare, bellum gerere, coercere omnibus modis ſocios atque cives: domi militiæque imperium judiciumque ſummum habere: aliter ſine populi juſſu nulli earum rerum Conſuli jus eſt. Salluſt. de Bell. Catilin. 29. Cic. in Cat. 1. xi.

[*n*] Comitia dilata ex Senatus conſulto. [Cic. Ep. ad Att. 4. 16.] Meminiſtis fieri S. C. me referente, ne poſtero die Comitia haberentur. [Cic. pr. Mur. 25.]

Is Rex [Deiotarus] quem Senatus hoc nomine ſæpe appellaviſſet. [pr. Deiot. 3.]

De

Theſe were the principal articles, in which the Senate had conſtantly exerciſed a peculiar juriſdiction, excluſive of the people; not grounded on any expreſs law, but the cuſtom onely and practice of their anceſtors, derived to them from the earlieſt ages. And as this was found by long experience, to be the moſt uſefull way of adminiſtering the public affairs, and the moſt conducive to the general peace and proſperity of the city, ſo it was ſuffered by the tacit conſent of the people, to continue in the hands of the Senate, as a matter of convenience, rather than of right, and connived at, rather than granted, for the ſake of the common good [*o*].

De Maſiniſſa Rege appellato. Vid. Liv. 30. 17.
De præmiis indicibus. decretis.
Vid. Salluſt. Bell. Cat. 30. Cic. in Car. 4. 3. 3. 4.
De Dolabella hoſte judicato. Phil. xi. 12.
De Lepido, Ep. Fam. 12. x. Senatus frequens veſtem pro mea ſalute mutandam cenſuit. pr. Sext. 12.

[*o*] Cui populus ipſe moderandi & regendi ſui poteſtatem, quaſi quaſdam habenas, tradidiſſet. Cic. de Orat. 1. 52.

But

But whenever any bold Tribun, or factious magiſtrate, not content with the honors of the city in the uſual forms, nor with ſuch, as the Senate was diſpoſed to confer upon him, choſe to apply to the people for ſome extraordinary grant of them, the citizens were frequently induced, by the artifices of ſuch leaders, to ſeize into their own hands ſeveral branches of that juriſdiction, which I have been deſcribing, and which had always been adminiſtered before by the Senate. And after this method was once introduced and found to be effectual, it became by degrees the common recourſe of all, who, for the advancement of their private ambition, affected the character of popularity; and was puſhed ſo far at laſt, as to deprive the Senate in effect of all it's power and influence in the ſtate.

For in the firſt place, the Tribuns ſoon ſnatched from them that original right, which they had enjoyed from

the very foundation of the city, of being the authors or firſt movers of every thing, which was to be enacted by the people; and excluded them from any ſhare or influence in the aſſemblies of their tribes [*p*]: and tho' in the other aſſemblies of the *Curiæ* and *the Centuries*, they ſeemed to have reſerved to them their ancient right, yet it was reduced to a mere form, without any real force: for inſtead of being, what they had always been, the authors of each particular act, that was to be propoſed to the people's deliberation, they were obliged by a ſpecial law, to authoriſe every aſſembly of the people, and whatever ſhould be determined in it, even *before the people had proceded to any vote* [*q*]: and *C. Gracchus* afterwards, in

[*p*] Vid. Dionyſ. Hal. l. 41, 49.

Quod Patres apud majores noſtros non tenere potuerunt, ut reprehenſores eſſent comitiorum. Cic. pr. Planc. 3.

[*q*] Q. Publilii Philonis Dictatura popularis. quod tres leges ſecundiſſimas plebi, adverſas nobilitati tulit. unam, ut plebiſcita omnes Quirites tenerent: alteram,

in his famous Tribunate, uſed to boaſt, *that he had demoliſhed the Senate at once*, by transferring to the Equeſtrian order, *the right of judicature in all criminal cauſes*, which the Senate had poſſeſſed from the time of the Kings [*r*].

But no man ever inſulted their authority more openly, or reduced it ſo low, as *J. Cæſar:* who inſtead of expecting from the Senate, as the practice had always been, the aſſignment of a provincial government, at the expiration of his Conſulſhip, applied himſelf directly to the people; and by the help of the Tribun, *Vatinius*, procured from them a law, by which the provinces of *Illyricum* and the *Ciſalpine Gaul* were conferred upon him *for the term of five years*, with a large appointment of money and troops; which ſo ſhocked

alteram, ut legum, quæ Comitiis Centuriatis ferrentur, ante initum ſuffragium Patres auctores fierent. Liv. 8. 12.

[*r*] Ὅτι ἀθρόως τὴν βουλὴν καθηρήκει. Appian. de Bell. Civ. l. 1.

the

the Senate, and was thought ſo fatal to their authority, that leſt it ſhould become a precedent by being repeated, they thought fit, of their own accord, to add to the two provinces already granted to him, the government alſo of the *Tranſalpine Gaul*, which he was underſtood ſtill to deſire, that they might prevent him from making a ſecond application to the people [*s*]. It was in theſe days of faction and violence, promoted chiefly by *Cæſar*, in the firſt Triumvirate, that a profligate Conſul, *Gabinius*, in a public ſpeech to the people, had the inſolence to declare, *that men were miſtaken, if they imagined, that the Senate had then any ſhare of power or influence in the Republic* [*t*].

[*s*] Et initio quidem Galliam Ciſalpinam, Illyrico adjecto, lege Vatinia accepit: mox per Senatum, Comatam quoque; veritis Patribus, ne ſi ipſi negaſſent, populus & hanc daret. Suet. J. Cæſ. c. 22. Plutar. p. 714.

[*t*] Habet talem orationem Conſul, qualem nunquam Catilina victor habuiſſet; errare homines, ſi etiam tum Senatum aliquid in Repub. poſſe arbitrarentur. Cic. pr. Sext. 12.

But

But in all theſe inſults on the authority of the Senate, though the honeſt of all ranks loudly inveighed againſt them, and deteſted the authors of them, as men of dangerous views, who aſpired to powers, that threatened the liberty of the city; yet none ever pretended to ſay, that the acts themſelves were illegal; or that the people had not a clear right, by the very conſtitution of the Republic, to command and enact whatever they judged expedient.

SECT. II.

Of the right and manner of ſummoning or calling the Senate together.

THE right of convoking the Senate on all occaſions, belonged of Courſe to the Conſuls, as the ſupreme magiſtrates of the city [*v*]: which

[*v*] What is here ſaid, of the proper right of the Conſuls to ſummon the Senate, muſt be underſtood likewiſe of all thoſe other magiſtrates, who were created on extraordinary occaſions with ſupreme power,

which in their abſence devolved regularly to the next magiſtrates in dignity, the Prætors, and the Tribuns [*x*]. But theſe laſt, as I have elſewhere obſerved, by virtue of their office, clamed and exerciſed a power of ſummoning the Senate at any time, whenever the affairs of the people required it, though the Conſuls themſelves were in the city [*y*]. Yet, out of deference to the Conſular authority, the Senate was but rarely called, when they were abroad, unleſs in caſes of ſudden emergency, which required ſome preſent reſolution [*z*].

In

power, in the place or abſence of the Conſuls: as, the *Dictator*, *Military Tribuns*, *Decemviri*, *Interrex*, *Præfect of the city*. Vid. A. Gell. 14. 7.

[*x*] Placuit nobis, ut ſtatim ad Cornutum, Prætorem urb. litteras deferremus; qui, quod Conſules aberant, Conſulare munus ſuſtinebat, more majorum. Senatus eſt continuo convocatus.—Cic. Ep. Fam. x. 12.

[*y*] Οἱ δὲ τότε δήμαρχοι πρῶτοι συγκαλεῖν ἐπεβάλοντο τὴν βουλήν. Dionyſ. x. 31.

Cum Tribuni pl. edixiſſent, Senatus adeſſet. a. d. xiii. Kal. Jan. Cic. Ep. Fam. xi. 6. it. x. 28.

[*z*] Senatus ſæpius pro tua dignitate appellaretur, ſi

In the early ages of the Republic, when the precincts of the city were ſmall, the Senators were perſonally ſummoned by an Apparitor [*a*]: and ſometimes by a public Crier, when their affairs required an immediate diſpatch [*b*]. But the uſual way of calling them in later days, was by an edict, appointing the time and place, and publiſhed ſeveral days before, that the notice might be more public [*c*]. Theſe edicts were commonly underſtood to reach no farther than to thoſe, who were reſident in *Rome*, or near it; yet when any extraordinary affair was in agitation, they ſeem to have been pub-

ſi abſentibus Conſulibus unquam, niſi ad rem novam cogeretur. Cic. ibid. 12. 28. Liv. 30. 23.

[*a*] A Villa in Senatum arceſſebantur & Curius & ceteri Senes: ex quo, qui eos arceſſebant, viatores nominati ſunt. Cic. de Sen. 16.

[*b*] Poſtquam audita vox in Foro præconis, Patres in Curiam ad Decemviros vocantis, &c. Liv. 3. 38. Ὀπίμιος τὴν βελὴν διὰ κηρύκων συνεκάλει. App. Bell. Civ. 1.

[*c*] Cum tot edicta propoſuiſſet Antonius, (Conſul) edixit, ut adeſſet Senatus frequens a. d. viii. Kal. Dec.—in ante diem. iv. Kal. diſtulit. Cic. Phil. 3. 8.

liſhed

liſhed alſo in the other cities of *Italy* [*d*]. If any Senator refuſed or neglected to obey this ſummons, the Conſul could oblige him to give ſurety, for the payment of a certain fine, if the reaſons of his abſence ſhould not be allowed [*e*]. But from ſixty years of age, they were not liable to that penalty, nor obliged to any attendance, but what was voluntary [*f*]. In ancient times, as *Valerius* writes, " the Senators were " ſo vigilant and attentive to the care " of the public, that, without waiting " for an edict, they uſed to meet con-

[*d*] Senatum etiam Kalendis velle ſe frequentem adeſſe, etiam Formiis proſcribi juſſit. Cic. de J. Cæſare. ad Att. 9. 17.

[*e*] Poſtquam citati non conveniebant, dimiſſi circa domos Apparitores ad pignora capienda, Liv. 3. 38. Quis unquam tanto damno Senatorem coegit? aut quid eſt ultra, præter pignus & mulctam? Cic. Phil. 1. 5.

[*f*] Lex a ſexageſimo anno Senatorem non citat. Senec. de Brev. vit. 20. But *Seneca* the father tells us, that their abſence was excuſed onely from the *ſixty fifth year* of their age, which ſeems moſt probable. Controv. Ult. l. 1. Senator poſt annum ſexageſimum quintum in Curiam venire nec cogitur nec vetatur.

" ſtantly

" ſtantly of themſelves, in a certain " portico, adjoining to the Senate " houſe, whence they could preſently " be called into it, as ſoon as the Con- " ſul came; eſteeming it ſcarce wor- " thy of praiſe, to perform their duty " to their country, by command onely, " and not of their own accord [*g*]."

SECT. III.

Of the place in which the Senate uſed to meet.

THE Senate could not regularly be aſſembled in any private or profane place; but always in one ſet apart, and *ſolemnly conſecrated to that uſe, by the rites of augury* [*h*]. There were ſeveral of theſe in different parts of the city, which are mentioned occaſionally by the old writers, as places,

[*g*] Val. Max. l. 2. 2. 6.

[*h*] Docuit confirmavitque (Varro) niſi in loco per Augures conſtituto, quod Templum appellaretur, Senatus conſultum factum eſſet, juſtum id non fuiſſe. A. Gell. 14. 7.

in which the Senate uſually met; as they happened to be appointed by different Conſuls, agreeably either to their own particular convenience, or to that of the Senate in general, or to the nature of the buſineſs, which was to be tranſacted. Theſe Senate houſes were called *Curiæ*, as the *Curia Calabra*, ſaid to be built by *Romulus*; the *Curia Hoſtilia*, by *Tullus Hoſtilius*; and the *Curia Pompeia*, by *Pompey the Great* [*i*].

But the meetings of the Senate were more commonly held in certain temples dedicated to particular Deities; as in that of *Jupiter*, *Apollo*, *Mars*, *Vulcan*, *Caſtor*, *Bellona*; of *Concord*, *Faith*, *Virtue*, *the Earth*, &c. For we find all theſe particularly celebrated by the ancients, as places, where the

[*i*] Juxta Curiam Calabram, quæ Caſæ Romuli proxima eſt. Macr. Sat. 1. 15.

Quod cum Senatus de his rebus in Curia Hoſtilia haberetur. Liv. 5. 55.

Poſtquam Senatus Idib. Mart. in Curiam Pompeii edictus eſt. Suet. J. Cæſ. 80.

Senate was frequently aſſembled: all which had Altars and Images erected in them, for the peculiar worſhip of thoſe Deities, whoſe names they bore: yet theſe Temples, on account of the uſe, which the Senate made of them, were called likewiſe *Curiæ*; as well as the proper *Curiæ*, or Senate houſes, on account of their ſolemn dedication, are frequently called *Temples* [*k*]: For the word Temple, in it's primary ſenſe, ſignified nothing more, than a place ſet apart, and conſecrated by the Augurs; whether incloſed or open; in the city, or in the fields. Agreeably to which notion, the Senate uſed to meet on ſome occaſions in the open air; and eſpecially whenever a report

[*k*] Propterea & in Curia Hoſtilia & Pompeia—cum profana ea loca fuiſſent, templa eſſe per Augures conſtituta, ut in iis Senatus conſulta, more majorum, juſta fieri poſſent. A. Gell. 14. 7.

Qui—Curiam incenderit?—Templum ſanctitatis, ſplitudinis, mentis, conſilii publici—[Cic. pr. Mil. .] Cum Senatus in Curiam, hoc eſt, Ædem Concordiæ, Templumque inauguratum conveniſſet. Lamd. Alex. Sev. c. 6.

was made to them in form, that *an ox had ſpoken*; which prodigy, as *Pliny* tells us, was common in the earlier ages [*l*].

The view of the government, in appropriating theſe Temples to the uſe of the Senate, was, to imprint the more ſtrongly on the minds of it's members, the obligation of acting juſtly and religiouſly, from the ſanctity of the place, and the preſence, as it were, of their Gods. Thus one of the Cenſors removed the ſtatue of *Concord* from a part of the city, in which it was firſt erected, into the Senate houſe, which he dedicated to that Goddeſs; imagining, as *Cicero* tells us, *that he ſhould baniſh all love of diſſenſion, from that ſeat and temple of the public counſil, which he had devoted by that mean*

[*l*] In hoc tumultu Flaccus inter Æſquilinam Collinamque portam poſuit caſtra. Conſules Senatuſque in caſtra venerunt. Liv. 26. 10.

Eſt frequens in prodigiis priſcorum, bovem locutum: quo nuntiato, Senatum ſub divo haberi ſolitum. Plin. Hiſt. N. 8. 45.

to the religion of Concord [*m*]. The caſe was the ſame with the Temples of the other Goddeſſes, in which the Senate often met; of *Bellona*, *Faith*, *Virtue*, *Honor*; that the very place might admoniſh them, of the reverence due to thoſe particular virtues, which their anceſtors had deified for the ſake of their excellence: and it was to ſtrengthen this principle and ſenſe of religion in them, that *Auguſtus* afterwards injoined, *that every Senator, before he ſat down in his place, ſhould ſupplicate that God, in whoſe Temple they were aſſembled, with incenſe and wine* [*n*].

The Senate, on two ſpecial occaſions, was always held without the gates of *Rome*, either in the Temple of *Bellona*,

[*m*] Præſcribere enim ſe arbitrabatur, ut ſine ſtudiis diſſenſionis ſententiæ dicerentur, ſi ſedem ipſam ac Templum publici conſilii religione Concordiæ devinxiſſet. Cic. pr. Dom. 51.

[*n*] Quo autem lecti probatique & religioſius & minore moleſtia, Senatoria munera fungerentur, ſanxit, ut prius, quam conſideret quiſque, thure ac mero ſupplicaret apud aram ejus Dei, in cujus Templo coiretur. Suet. Aug. c. 35.

or of *Apollo*. 1ſt, For the reception of foreign embaſſadors; and eſpecially of thoſe, who came from enemies, who were not permitted to enter the city. 2dly, To give audience and tranſact buſineſs with their own generals, who were never allowed to come within the walls, as long as their commiſſion ſubſiſted, and they had the actual command of an army [*o*].

SECT. IV.

Of the time when the Senate might legally be aſſembled.

PAULLUS MANUTIUS is of opinion, that there were certain days, on which the Senate might regularly

[*o*] Legati Nabidis Tyranni Romam venerunt duo. his extra Urbem, in Ædе Apollinis Senatus datus eſt. Liv. 34. 43.

Legati ab Rege Perſeo venerunt. eos in oppidum intromitti non placuit, quum jam bellum Regi eorum—Senatus decreſſet, & populus juſſiſſet—in Ædem Bellonæ in Senatum introducti. Id. 42. 36.

P. Corn.

regularly be aſſembled, and others, on which it could not: and that theſe laſt were called *Comitial* days, and marked under that name in the Kalendars, as days wholly deſtined and ſet apart by law, for the aſſemblies of the people [*p*]. But *Sigonius* contends, that the Senate might meet on any of thoſe days, unleſs when the People were actually aſſembled, and tranſacting buſineſs on them: in proof of which, he brings ſeveral teſtimonies from the old writers, wherein the Senate is ſaid to have been held, not onely on thoſe days, which are marked in the *Faſti*, as *Comitial*; but on thoſe alſo, on which the people had been actually aſſembled, but after their aſſemblies

P. Corn. Scipio Conſul—poſtero die quam venit Romam, Senatu in Ædem Bellonæ vocato, quum de rebus a ſe geſtis diſſeruiſſet, poſtulavit, ut ſibi triumphanti liceret in urbem invehi. Id. 36. 39.

Qui ne triumphaturi quidem intrare Urbem injuſſu Senatus deberetis: quibuſque exercitum victorem reducentibus curia extra muros præberetur. Senec. de Benef. 5. 15.

[*p*] De Senatu Romano. c. 5.

were diſmiſſed. He obſerves likewiſe, that the number of *Comitial* days, as they are marked in the Kalendars, amount in all to *two hundred:* which makes it ſcarce credible, that either the affairs of the people ſhould neceſſarily employ ſo many days, or that the Senate ſhould be precluded from the uſe of ſo many in each year: from all which he infers, that the title of *Comitial* denoted ſuch days onely, on which the people might be legally aſſembled; not ſuch, on which they were of courſe to be aſſembled [*q*].

The truth of the matter ſeems to be this, that though the days called *Comitial* were regularly deſtined to the aſſemblies of the people; yet the Senate alſo might not onely be convened on the ſame, after the popular aſſemblies were diſſolved, but had the power likewiſe, whenever they found it

[*q*] Vid. Joh. Sarium Zamoſc. de Senatu Rom. l. 2. 7. quem librum Car. Sigonius ſub nomine diſcipuli ſui ſcripſit.

expedient,

expedient, to ſuperſede and poſtpone the aſſemblies of the people to another day; and by a particular decree, to authoriſe their own meetings upon them, for the diſpatch of ſome important affair therein ſpecified [*r*].

The Senate met always of courſe on the firſt of *January*, for the inauguration of the new Conſuls, who entered into their office on that day: and there are inſtances in the ancient writers, of it's being aſſembled on every other day, except one or two, till after the 15th of the ſame month; the latter part of which was probably aſſigned to the aſſemblies of the people [*s*]. The month of *February*, ge-

[*r*] Senatus deinde, concilio plebis dimiſſo, haberi cœptus. Liv. 38. 53: 39. 39.

M. Marcellus Conſul—de ea re ita cenſuit, uti Conſules de iis ad Senatum referrent—utique ejus rei cauſa per dies Comitiales Senatum haberent, Senatuſque conſultum facerent. Cic. Ep. Fam. 8. 8.

Meminiſtis fieri Senatus conſultum, referente me, ne poſtero die Comitia haberentur, ut de his rebus in Senatu agere poſſemus. Cic. pr. Mur. 25.

[*s*] Vid. Paull. Manut. ibid.

nerally ſpeaking, was reſerved intire by old cuſtom to the Senate, for the particular purpoſe of giving audience to foreign embaſſadors [*t*]. But in all months univerſally, there were three days, which ſeem to have been more eſpecially deſtined to the Senate, *the Kalends, Nones, and Ides*, from the frequent examples found in hiſtory, of it's being convened on thoſe days. But *Auguſtus* afterwards enacted, that the Senate ſhould not meet regularly or of courſe, except on *two days* onely in each month, the *Kalends and Ides* [*v*]. The Senate was ſeldom or never held on public feſtivals, which were dedicated to ſhews and ſports. In the month of *December*, in which the *Saturnalia* were celebrated for ſeveral

[*t*] A Kalendis Feb. Legationes in Idus Feb. rejiciebantur. Cic. ad Frat. 2. 3.

Hic eſt menſis, quo Senatus frequens poſtulatis provinciarum, & legationibus audiendis datur. Aſcon. in Verr. 1. 35. Ep. ad Fra. 2. 12.

[*v*] Ne plus quam bis in menſe legitimus Senatus ageretur, Kalendis & Idibus. Suet. Aug. 35.

days

days ſucceſſively, *Cicero* giving an account of the debates of the Senate, when two hundred members were preſent, calls it *a fuller meeting than he thought it poſſible to have been, when the holy days were commencing* [*x*].

On their days of meeting, they could not enter upon any buſineſs *before the Sun was riſen*; nor finiſh any, *after it was ſet*. Every thing tranſacted by them, either before or after that time, was null and void, and the author of it liable to cenſure [*y*]: whence it became a ſtanding rule, that nothing new ſhould be moved, *after four a clock in the afternoon* [*z*]. *Cicero* therefore reflects

[*x*] Senatus fuit frequentior, quam putabamus eſſe poſſe, menſe Decembri ſub dies feſtos—ſane frequentes fuimus; omnino ad ducentos. Cic. Ep. ad Fr. 2. 1.

[*y*] Poſt hæc deinceps dicit, (Varro) Senatus conſultum, ante exortum aut poſt occaſum ſolem factum, ratum non fuiſſe. Opus etiam Cenſorium feciſſe exiſtimatos, per quos eo tempore S. C. factum eſſet. A. Gell. 14. 7.

[*z*] Majores noſtri novam relationem poſt horam decimam in Senatu fieri vetabant. Senec. de Tranquillitat. 168. A.

on

on certain decrees, procured by *Antony*, in his Conſulſhip, as being made *too late in the evening*, to have any authority [*a*].

SECT. V.

Of the different ranks and orders of men in the Senate, and of the method obſerved in their deliberations.

THE Senate, as I have ſhewn above, was compoſed of all the principal magiſtrates of the city, and of all, who had born the ſame offices before them: and conſiſted therefore of ſeveral degrees and orders of men, who had each a different rank in it, according to the dignity of the character, which he ſuſtained in the Republic.

[*a*] Præclara tamen Senatus conſulta illo ipſo die Veſpertina. Cic. Phil. 3. x.

There is one inſtance however of the Senate's being aſſembled at midnight. A. U. 290. upon the arrival of an expreſs from one of the Conſuls, to inform the Senate, that he was beſieged by the ſuperior forces of the *Æqui and Volſci*, and in danger of being deſtroyed, with his whole army, without an immediate ſuccour; which was accordingly decreed and ſent to him without loſs of time. Dionyſ. 9. 63.

At

At the head of it, ſat the two Conſuls in chairs of ſtate [*b*]; raiſed, as we may imagine, by a few ſteps, above the level of the other benches: out of reſpect to whoſe ſupreme dignity, the whole aſſembly uſed to pay the compliment of *riſing up* from their ſeats, as ſoon as they entered into the Senate houſe [*c*]. *Manutius* thinks, that the other magiſtrates ſat next to the Conſular chair, each according to his rank; the *Prætors*, *Cenſors*, *Ædiles*, *Tribuns*, *Quæſtors* [*d*]. But that opinion is grounded onely on conjecture;

[*b*] Non hæc ſedes honoris, ſella curulis, unquam vacua mortis periculo fuit. Cic. in Cat. 4. 1.

[*c*] Num quiſquam tibi, [Conſuli] in Curiam venienti aſſurrexit. in Piſ. 12.

[*d*] Vid. Paul. Manut. de Senatu Rom. c. ix. But ſince the manner of their ſitting can be gathered onely from conjecture, I have been apt rather to think, that the Conſular Senators, who, in all ages of the Republic, were the leaders and firſt ſpeakers in the Senate, uſed to ſit next in order to the Conſuls: and after them the *Prætors*, and all who were of *Prætorian* dignity, or had been *Prætors*: then the *Ædiles*, the *Tribuns*, and the *Quæſtors*,

conjecture; ſince none of the ancients have left us any account of their manner of ſitting. This however is certain, that all the private Senators ſat on different benches, and in a different order of precedency, according to the dignity of the magiſtracies, which they had ſeverally born. Firſt the *Conſulars*; then the *Prætorians*, *Ædilitians*, *Tribunitians*, *and Quæſtori-*

ſtors, on diſtinct benches; and on the ſame bench with each, all who had born the ſame offices: but the Curule magiſtrates, as the *Prætors* and *Ædiles*, were perhaps diſtinguiſhed at the head of their ſeveral benches, by ſeats ſomewhat raiſed or ſeparated at leaſt from the reſt in the form of our Settees, or of that *Longa Cathedra*, which *Juvenal* mentions, to denote their Curule dignity. Sat. 9. 52.

Theſe Senatorian benches were long, ſo as to hold a great number on each: whence *Pompey* uſed to call the determinations of the Senate, *the judgement of the long bench*, [Cic. Ep. Fam. 3. 9.] by way of diſtinction from the ſhorter benches of the courts of judicature. Some of theſe benches however appear to have been very ſhort, or not unlike to our ſtools; on which each of the ten Tribuns perhaps uſed to ſit ſingle: for the Emperor *Claudius*, as *Suetonius* writes, when *he had any great affair to propoſe to the Senate, uſed to ſit upon a Tribunitian bench, placed between the Curule chairs of the two Conſuls.* Suet. Claud. 23.

ans

ans: in which order, and by which titles, they are all enumerated by *Cicero* [*e*]: and as this was their order in ſitting, ſo it was the ſame alſo, in delivering their opinions, when it came to their turn.

But beſides theſe ſeveral orders, of which the Senate was compoſed, there was one member of it diſtinguiſhed always from the reſt, by the title of *Prince of the Senate:* which diſtinction had been kept up from the very beginning of the Republic; to preſerve the ſhadow of that original form, eſtabliſhed by their founder, *Romulus*; by which he reſerved to himſelf the nomination of the firſt or principal Senator, who in the abſence of the King, was to preſide in that aſſembly. This title was given of courſe to that perſon, whoſe name was *called over the firſt* in the roll of the Senate, whenever it was renewed by the Cenſors. He was always one of Conſular and Cen-

[*e*] Cic. Phil. 13. 13, 14.

ſorian dignity; and generally one of the moſt eminent for probity and wiſdom: and the title itſelf was ſo highly reſpected, that he who bore it, was conſtantly called by it, preferably to that of any other dignity, with which he might happen to be inveſted [*f*]: yet there were no peculiar rights annexed to this title, nor any other advantage, except an acceſſion of authority, from the notion, which it would naturally imprint, of a ſuperior merit in thoſe, who bore it.

[*f*] P. Lentulum, Principem Senatus. [Cic. Phil. 8. 4.] Cum armatus M. Æmilius, Princeps Senatus in Comitio ſtetiſſet. pr. Rabir. 7.

After the inſtitution of the Cenſors, it became a cuſtom to confer this title of *Prince of the Senate*, on the oldeſt Senator then living, of Cenſorian dignity: but in the ſecond Punic war, when one of the Cenſors inſiſted, that this rule, delivered to them by their anceſtors, ought to be obſerved, by which *T. Manlius Torquatus* was to be called over the firſt of the Senate; the other Cenſor declared, that ſince the Gods had given to him the particular lot of calling over the Senate, he would follow his own will in it, and call *Q. Fabius Maximus* the firſt; who by the judgement of *Hannibal* himſelf, was allowed to be the *Prince of the Roman people*. Liv. 27. xi.

The

The Senate being aſſembled, the Conſuls, or the magiſtrate, by whoſe authority they were ſummoned, having firſt taken the auſpices, and performed the uſual office of religion, by ſacrifice and prayer, uſed to open to them the reaſons of their being called together, and propoſe the ſubject of that day's deliberation: in which all things divine, or relating to the worſhip of the Gods, were diſpatched preferably to any other buſineſs [*g*]. When the Conſul had moved any point, with intent to have it debated and carried into a decree, and had ſpoken upon it himſelf, as long as he thought proper, he proceeded to aſk the opinions of the other Senators ſeverally by name, and in their proper order; beginning always with the Conſulars, and going on to the Prætorians, &c. It was the practice original-

[*g*] Docet deinde, (Varro) immolare hoſtiam prius, auſpicarique debere, qui Senatum habiturus eſſet: de rebus divinis prius quam humanis ad Senatum referendum eſſe. A. Gell. 14. 7.

ly, to *aſk the Prince of the Senate the firſt:* but that was ſoon laid aſide, and the compliment transferred to any other ancient Conſular, diſtinguiſhed by his integrity and ſuperior abilities: till in the later ages of the Republic, it became an eſtabliſhed cuſtom, to pay that reſpect to relations, or particular friends, or to thoſe, who were likely to give an opinion the moſt favorable to their own views and ſentiments on the quæſtion propoſed [*b*]. But whatever order the Conſuls obſerved, in aſking opinions, on the firſt of *January*, when they entered into their office, they generally purſued the ſame through the reſt of the Year. *J. Cæſar* indeed broke through this rule: for though he had aſked *Craſſus* the firſt, from the beginning of his Con-

[*b*] Singulos autem debere conſuli gradatim, incipique a Conſulari gradu. ex quo gradu ſemper quidem antea primum rogari ſolitum, qui Princeps in Senatum lectus eſſet: tum novum morem inſtitutum refert, per ambitionem gratiamque, ut is primus rogaretur, quem rogare vellet, qui haberet Senatum, dum is tamen ex gradu conſulari eſſet. ibid.

ſulſhip,

ſulſhip, yet upon the marriage of his daughter with *Pompey*, he gave that priority to his Son-in-law; for which however he made an apology to the Senate [*i*].

This honor, of being aſked in an extraordinary manner, and preferably to all others of the ſame rank, though of ſuperior age or nobility, ſeems to have been ſeldom carried farther, than to four or five diſtinguiſhed perſons of Conſular dignity [*k*]; and the reſt were afterwards aſked according to their ſe-

[*i*] Ac poſt novam affinitatem, *Pompeium* primum rogare ſententiam cœpit, (J. Cæſar) quum *Craſſum* roleret: eſſetque conſuetudo, ut quem ordinem interrogandi ſententias Conſul Kal. Jan. inſtituiſſet, eum toto anno conſervaret. Suet. J. Cæſ. 21.

Ejus rei rationem reddidiſſe eum Senatui, Tiro Tullius, M. Ciceronis libertus, refert. A. Gell. 4. x.

[*k*] Scito igitur, primum me non eſſe rogatum ententiam: præpoſitumque eſſe nobis Pacificatorem Allobrogum: idque admurmurante Senatu, neque me invito, eſſe factum—& ille ſecundus in dicendo ocus habet auctoritatem pœne principis. tertius ſt Catulus: quartus (ſi etiam hoc quæris) Horenſius. Cic. ad Att. 1. 13.

C. Cæſar in Conſulatu—quatuor ſolos extra ordiem ſententiam rogaſſe dicitur. A. Gell. 4. x.

niority: and this method, as I have ſaid, was obſerved generally through the year, till the election of the future Conſuls, which was commonly held about the month of *Auguſt*: from which time, it was the conſtant cuſtom, to aſk the opinions of *the Conſuls elect* preferably to all others, 'till they entered into their office, on the firſt of *January* following [*l*].

As the Senators then were perſonally called upon to deliver their opinions, according to their rank, ſo none were

[*l*] Tum D. Junius Silanus, primus ſententiam rogatus, quod eo tempore Conſul deſignatus erat. [Salluſt. Bell. Cat. 50.] Ego tamen ſic nihil expecto, quomodo Paullum, Conſulem deſignatum, primum ſententiam dicentem. Cic. Ep. Fam. 8. 4. Vid. it. Phil. 5. 13.

As the Conſuls elect had this preference given in ſpeaking before all the Conſulars, ſo the Prætors and Tribuns elect ſeem to have had the ſame, before the reſt of their particular orders: for in that famous debate upon the manner of puniſhing *Catiline*'s accomplices, we find that *J. Cæſar*, then *Prætor elect*, was aſked his opinion by the Conſul, at the head of the Prætorians; and *M. Cato*, then *Tribun elect*, was aſked likewiſe in his turn, at the head of the Tribunitians. Vid. Salluſt. Bell. Cat. 51, 52. Cic. Ep. ad Att. l. 12. 21. it. Pigh. Annal.

allowed

allowed to ſpeak, till it came to their turn, excepting the magiſtrates; who ſeem to have had a right of ſpeaking on all occaſions, whenever they thought fit; and for that reaſon perhaps were not particularly aſked or called upon by the Conſuls. *Cicero* indeed on a certain occaſion, ſays, *that he was aſked the firſt of all the private Senators* [*m*]; which implies, that ſome of the magiſtrates had been aſked before him: but they were then aſked by a *Tribun of the people*, by whom that meeting of the Senate had been ſummoned, and who would naturally give that preference to the ſuperior magiſtrates, who then happened to be preſent: but I have never obſerved, that a Conſul aſked any one the firſt, but a Conſular Senator, or the Conſuls elect.

Tho' every Senator was obliged to declare his opinion, when he was aſked

[*m*] Racilius ſurrexit, & de judiciis referre cœpit. Marcellinum quidem primum rogavit — poſtea de privatis me primum ſententiam rogavit — Cic. ad Fra. 2. 1.

by the Conſul, yet he was not confined to the ſingle point then under debate, but might launch out into any other ſubject whatſoever, and harangue upon it as long as he pleaſed [*n*]. And though he might deliver his opinion with all freedom, when it came to his turn, yet the Senate could not take any notice of it, nor enter into any debate upon it, unleſs it were eſpouſed and propoſed to them in form by ſome of the magiſtrates, who had the ſole privilege of referring any quæſtion to a vote, or of dividing the houſe upon it [*o*]. Whenever any one ſpoke, he roſe up from his ſeat, and ſtood while he

[*n*] Licere Patribus, quoties jus ſententiæ dicendæ accepiſſent, quæ vellent expromere, relationemque in ea poſtulare. Tacit. Ann. 13. 49.

Erat jus Senatori, ut ſententiam rogatus, diceret ante quicquid vellet aliæ rei, & quoad vellet. A. Gell. 4. x.

[*o*] Huic aſſentiuntur reliqui Conſulares, præter Servilium—& Volcatium, qui, Lupo referente, Pompeio decernit. Cic. Ep. Fam. 1. 1, 2.

From theſe two epiſtles it appears, that *Volcatius*'s opinion in favor of *Pompey*, was not referred to

he was ſpeaking; but when he aſſented onely to another's opinion, he continued ſitting [*p*].

Several different motions might be made, and different quæſtions be referred to the Senate by different magiſtrates, in the ſame meeting [*q*]: and if any buſineſs of importance was expected or deſired, which the Conſuls had omitted to propoſe, or were unwilling to bring into debate, it was uſual for the Senate, by a ſort of general clamor, to call upon them to move it; and upon their refuſal, the other magiſtrates had a right to pro-

to the Senate by *Volcatius* himſelf, who was then a private Senator, but by *Lupus*, then Tribun of the people, in order to divide the houſe upon it. For a private Senator, as *Tacitus* intimates above, could onely, *relationem poſtulare*, that is, demand to have it referred to a vote by ſome of the magiſtrates.

[*p*] Racilius ſurrexit, &c. [Cic. ad Fra. 2. 1.] Poſtquam Cato aſſedit. [Salluſt. Bell. Cat. 53. Cic. ad Att. 1. 14.] Quotieſcunque aliquid eſt actum, ſedens iis aſſenſi, qui mihi leniſſime ſentire viſi ſunt. Cic. Ep. Fam. 5. 2.

[*q*] De Appia Via & de Moneta Conſul; de Lupercis Tribunus pleb. refert. Cic. Phil. 7. 1.

pound it, even againſt their will [*r*]. If any opinion, propoſed to them, was thought too general, and to include ſeveral diſtinct articles, ſome of which might be approved, and others rejected, it was uſual to require, that it might be divided, and ſometimes by a general voice of the aſſembly, calling out, *divide, divide* [*s*]. Or if in the debate, ſeveral different opinions had been offered, and each ſupported by a number of Senators, the Conſul, in the cloſe of it, uſed to recite them all, that the Senate might paſs a vote ſeparately upon

[*r*] Conclamatum deinde ex omni parte Curiæ eſt, uti referret P. Ælius Prætor. [Liv. 30. 21.] Flagitare Senatus inſtitit Cornutum, ut referret ſtatim de tuis litteris. Ille, ſe conſiderare velle. cum ei magnum convicium fieret a cuncto Senatu, quinque Tribuni pl. retulerunt. [Cic. Ep. Fam. x. 16.] De quo legando ſpero Conſules ad Senatum relaturos; qui ſi dubitabunt, aut gravabuntur, ego me profiteor relaturum. Cic. pr. Leg. Man. 19.

[*s*] Quod fieri in Senatu ſolet, faciendum ego in Philoſophia etiam exiſtimo; cum cenſeat aliquis quod ex parte mihi placeat, jubeo dividere ſententiam. [Senec. Epiſt. 21.] Poſtulatum eſt, ut Bibuli ſententia divideretur. Cic. Ep. Fam. 1. 2. Vid. Aſcon. in Orat. pr. Mil. 6.

each:

each: but in this, he gave what preference he thought fit, to that opinion which he moſt favored, and ſometimes even ſuppreſſed ſuch of them, as he wholly diſapproved [*t*]. In Caſes however, where there appeared to be no difficulty or oppoſition, decrees were ſometimes made, without any opinion being aſked or delivered upon them [*v*].

When any quæſtion was put to the vote, it was determined always by a diviſion or ſeparation of the oppoſite parties, to different parts of the Senate houſe; the Conſul or preſiding magiſtrate having firſt given order for it in this form; *let thoſe, who are of ſuch an opinion, paſs over to that ſide; thoſe, who think differently, to this* [*x*]. What the majority of them approved, was

[*t*] Lentulus Conſul, ſententiam Calidii pronuntiaturum ſe omnino negavit. Cæſ. Comm. Bell. Civ. 429.

[*v*] Præclara tum oratio. M. Antonii—de qua ne ſententias quidem diximus. Scriptum S. C. quod fieri vellet, attulit. Cic. Phil. 1. 1.

[*x*] Qui hoc cenſetis, illuc tranſite; qui alia omnia,

drawn up into a decree, which was generally conceived in words prepared and dictated by the firſt mover of the quæſtion, or the principal ſpeaker in favor of it; who, after he had ſpoken upon it, what he thought ſufficient to recommend it to the Senate, uſed to conclude his ſpeech, by ſumming up his opinion in the form of ſuch a decree, as he deſired to obtain in conſequence of it [*y*]: which decree, when confirmed by the Senate, was always

nia, in hanc partem. [Feſt. in Voc. Qui.] de tribus Legatis, frequentes ierunt. in alia omnia. Cic. Ep. Fam. 1. 2.

[*y*] Thus *Cicero*'s *Philippic* Orations, which were ſpoken at different times in the Senate, on points of the greateſt importance, generally conclude with the form of ſuch a decree, as he was recommending on each particular occaſion; Quæ cum ita ſint; or Quas ob res, ita cenſeo. Vid. Philip. 3, 5, 8, 9, x, 13, 14.

Cicero ſpeaking of the decree, by which the accomplices of *Catiline* were condemned to ſuffer death, gives this reaſon why it was drawn in the name and words of *Cato*, tho' *Silanus*, the Conſul elect, had delivered the ſame opinion before him; becauſe *Cato* had ſpoken upon it more explicitely, fully, and ſtrongly than *Silanus*. Ep. ad Att. 12. 21.

ſigned

ſigned and atteſted by a number of Senators, who choſe to attend through the whole proceſs of it, for the ſake of adding their names to it, as a teſtimony of their particular approbation of the thing, as well as of reſpect to the perſon, by whoſe authority, or in whoſe favor it was drawn [*z*].

When the Senate appeared to be diſpoſed and ready to paſs a decree, it was in the power of any one of the ten Tribuns of the people, *to intercede*, as it was called; that is, to quaſh it at once, by his bare negative, without aſſigning any reaſon [*a*]. The general law of theſe *interceſſions* was, that any magiſtrate might inhibit the acts of

[*z*] Hæc enim Senatus conſulta non ignoro ab amiciſſimis ejus, cujus de honore agitur, ſcribi ſolere. [Cic Ep. Fam. 15. 6. it. 8. 8.] theſe ſubſcriptions were called, S. C^ti auctoritates. ibid.

[*a*] Veto was the ſolemn word uſed by the Tribuns, when they inhibited any decree of the Senate or law propoſed to the people. Faxo, ne juvet vox iſta, Veto, qua nunc concinentes Collegas noſtros tam læti auditis. Liv. 6. 37.

his

his equal, or inferior [*b*]: but the Tribuns had the ſole prerogative, of controuling the acts of every other magiſtrate, yet could not be controuled themſelves by any [*c*]. But in all caſes, where the determinations of the Senate were overruled by the negative of a Tribun, of which there are numberleſs inſtances, if the Senate was unanimous, or generally inclined to the decree ſo inhibited, they uſually paſſed a vote to the ſame purpoſe, and in the ſame words, which, inſtead of a decree, was called *an authority of the Senate*, and was entered into their journals [*d*], yet had no other force, than

[*b*] Poſtea ſcripſit (Varro) de interceſſionibus, dixitque intercedendi, ne Senatus conſultum fieret, jus fuiſſe iis ſolis, qui eadem poteſtate, qua ii, qui S. C. facere vellent, majoreve eſſent. [A. Gell. 14. 7.] Aſt ni poteſtas par majorve prohibeſſet, Senatus conſulta perſcripta ſervanto. Cic. de Leg. 3. 3.

[*c*] Οὔθεν γὰρ τῶν πραττομένων ὑπὸ τῆς ἀρχῆς ἐκείνης ἐπισχεῖν ἢ κωλῦσαι τῶν ἄλλων τινὶ ἔξεσιν, ἄλλ' ἐτέρᾳ δημάρχᾳ τοῦτο ἐξι τὸ κράτος. Dionyſ. x. 31.

[*d*] De his rebus Senatus auctoritas graviſſima interceſſit: cui cum *Cato* & *Caninius* interceſſiſſent, tamen

than to teſtify the judgement of the Senate on that particular quæſtion, and to throw the odium of obſtructing an uſefull act, on the Tribun, who had hindered it. And in order to deter any magiſtrate, from acting ſo factiouſly and arbitrarily in affairs of importance, they often made it part of the decree, which they were going to enact, that if any one attempted to obſtruct it, *he ſhould be deemed to act againſt the intereſt of the Republic* [e]. Yet this clauſe had ſeldom any effect on the hardy Tribuns, who uſed to apply their negative in defiance of it, as freely, as on any other more indifferent occaſion.

But the private Senators alſo, and

men eſt perſcripta. [Cic. Ep. Fam. 1. 2.] Servilius Ahala—ſi quis intercedat Senatus conſulto, ſe auctoritate fere contentum, dixit. Liv. 4. 57. Vid. Dio. 55. 550.

[e] Senatum exiſtimare, neminem eorum, qui poteſtatem habent intercedendi—moram afferre oportere, quominus S. C. fieri poſſit. qui impedierit—eum Senatum exiſtimare, contra Rempub. feciſſe. Si quis huic S. C^to^ interceſſerit, Senatui placere, auctoritatem perſcribi. Cic. Ep. F. 8. 8. ad Att. 4. 2.

eſpecially

eſpecially the factious and leaders of parties, had ſeveral arts of obſtructing or poſtponing a decree, by many pretexts and impediments, which they could throw in it's way. Sometimes they alledged ſcruples of religion; *that the Auſpices were not favorable, or not rightly taken*; which, if confirmed by the Augurs, put a ſtop to the buſineſs for that day [*f*]. At other times, they urged ſome pretended admonition from *the Sibylline books*, which were then to be conſulted and interpreted to a ſenſe that ſerved their purpoſe [*g*]. But the moſt

[*f*] Recitatis litteris, oblata religio *Cornuto* eſt Pullariorum admonitu, non ſatis diligenter eum auſpiciis operam dediſſe; idque a noſtro Collegio eſſe comprobatum. itaque res dilata eſt in poſterum. Ep. Fam. x. 12.

[*g*] Thus in a debate on the ſubject of replacing King *Ptolemy* on the throne of *Ægypt*; the Tribune *Cato*, who oppoſed it, produced ſome verſes from the *Sibylline* books, by which they were warned never to reſtore any King of *Egypt* with an army upon which the Senate laid hold on that pretext and voted it dangerous to the Republic, to ſend the King home with an army. [Dio. 39. p. 98. Cic. ad Fra. 2. 2.] concerning which *Cicero*, in his account

moſt common method was, *to waſt the day*, by ſpeaking for two or three hours ſucceſſively, ſo as to leave no time to finiſh the affair in that meeting; of which we find many examples in the old writers: yet when ſome of the more turbulent magiſtrates were groſſly abuſing this right, againſt the general inclination of the aſſembly, the Senators were ſometimes ſo impatient, as to ſilence them, as it were, by force, and to diſturb them in ſuch a manner, by their clamor and hiſſing, as to oblige them to deſiſt [*b*].

It ſeems probable, that a certain number of Senators was required by law,

of it to *Lentulus*, ſays, Senatus religionis calumniam non religione, ſed malevolentia, & illius regiæ largitionis invidia comprobat. Cic. Ep. Fam. 1. 1.

[*b*] C. Cæſar Conſul M. Catonem ſententiam rogavit. Cato rem, quam conſulebatur, quoniam non e Repub. videbatur, perfici nolebat. ejus rei gratia ducendæ, longa oratione utebatur, eximebatque dicendo diem. A. Gell. 4. x.

Cum ad Clodium ventum eſt, cupiit diem conſumere: neque ei finis eſt factus: ſed tamen cum horas

law, as neceſſary to legitimate any act, and give force to a decree. For it was objected ſometimes to the Conſuls, that they had procured decrees *ſurreptitiouſly, and by ſtealth as it were, from an houſe not ſufficiently full* [*i*]: and we find buſineſs alſo poſtponed by the Senate, for the want of *a competent number* [*k*]: ſo that when any Senator, in a thin houſe, had a mind to put a ſtop to their proceedings, he uſed to call out to the Conſul, *to number the Senate* [*l*]. Yet there is no certain number ſpecified by any of the old wri-

ras tres fere dixiſſet, odio & ſtrepitu Senatus, coactus eſt aliquando perorare. Cic. ad Att. 4. 2.

[*i*] Neque his contentus Conſul fuit. Sed poſtea per infrequentiam furtim Senatus conſulto adjecit &c. [Liv. 38. 44.] Qui per infrequentiam furtim Senatus conſultum ad ærarium detulit. Liv. 39. 4.

[*k*] In Kalendas rejecta re, ne frequentiam quidem efficere potuerunt. Cic. Ep. Fam. 8. 3. it. 8. 5.

[*l*] *Numera Senatum*, ait quivis Senator Conſuli, cum impedimento vult eſſe, quo minus faciat S. C. Feſt. in Voc. Numera.

Renuntiatum nobis erat, *Hirrum* diutius dicturum, prendimus eum, non modo non fecit, ſed cum de hoſtibus ageretur, & poſſet rem impedire, ſi, *numeraretur*, poſtularet, tacuit. Cic. Ep. Fam. 8. xi.

ters,

ters, except in one or two particular caſes. For example; when the *Bacchanalian* rites were prohibited in *Rome*, it was decreed, that no one ſhould be permitted to uſe them, without a ſpecial licence granted for that purpoſe by the Senate, when *an hundred members* were preſent [*m*]: and this perhaps was the proper number required at that time in all caſes, when the Senate conſiſted of *three hundred*. But about a century after, when it's number was increaſed to *five hundred*, *C. Cornelius*, a Tribun of the people, procured a law, that the Senate ſhould not have a power of *abſolving any one from the obligation of the laws*, unleſs *two hundred* Senators were preſent [*n*].

The decrees of the Senate were uſually publiſhed, and openly read to

[*m*] Quum in Senatu centum non minus adeſſent. Liv. 39. 18.

[*n*] Diximus — Cornelium primo legem promulgaſſe, nequis per Senatum lege ſolveretur: deinde tuliſſe, ut tum denique de ea re S. C. fieret, cum adeſſent in Senatu non minus C. C.

Aſcon. in Orat. pr. Cornel. 1.

the

the people, ſoon after they were paſſed; and an authentic copy of them was always depoſited in the public treaſury of the city, or otherwiſe they were not conſidered as legal or valid [*o*]. When the buſineſs of the day was finiſhed, the Conſul, or other magiſtrate, by whom the Senate had been called together, uſed to diſmiſs them with theſe words, *Fathers, I have no farther occaſion to detain you*; or, *no body detains you* [*p*].

SECT. VI.

Of the force or effect of the decrees of the Senate.

AS to the force of theſe decrees, it is difficult to define preciſely,

[*o*] Senatus conſulta nunquam facta ad ærarium (ab Antonio) referebantur. [Cic. Phil. 5. 4.] Igitur factum S C. ne decreta Patrum ante diem decimum ad ærarium deferrentur. Tacit. Ann. 3. 51.

[*p*] Neque unquam receſſit de Curia, niſi Conſul dixiſſet, *nihil vos moramur, Patres conſcripti.* [Capitolin. de M. Aurel.] Tum ille, ſe Senatum negavit tenere. Cic. ad Fra. 2. 1.

what

what it was. It is certain, that they were not conſidered as laws, but ſeem to have been deſigned originally, as the ground work or preparatory ſtep to a law, with a ſort of proviſional force, till a law of the ſame tenor ſhould be enacted in form by the people; for in all ages of the Republic no law was ever made, but by the general ſuffrage of the people. The decrees of the Senate related chiefly to the executive part of the government; to the aſſignment of provinces to their magiſtrates; and of ſtipends to their generals, with the number of their ſoldiers; and to all occaſional and incidental matters, that were not provided for by the laws, and required ſome preſent regulation: ſo that for the moſt part, they were but of a temporary nature, nor of force any longer, than the particular occaſions ſubſiſted, to which they had been applied.

But though they were not, ſtrictly ſpeaking, laws; yet they were under-

ſtood always to have a binding force; and were generally obeyed and ſubmitted to by all orders, till they were annulled by ſome other decree, or overruled by ſome law. Yet this deference to them, as I have ſignified above, was owing rather to cuſtom, and a general reverence of the city for the authority of that ſupreme council, than to any real obligation derived from the conſtitution of the government. For in the early ages, upon a diſpute concerning a particular decree, we find the Conſuls, who were charged with the execution of it, refuſing to enforce it, becauſe it was made by their predeceſſors, alledging, *that the decrees of the Senate continued onely in force for one year*; or during the magiſtracy of thoſe, by whom they were made [*q*]. And *Cicero* likewiſe, when it ſerved the cauſe of a client,

[*q*] Καὶ ἅμα ὐδὲ εἶναι νόμους εἰς ἀεὶ κυρίους, ἃ ψηφίζεται τὸ συνέδριον, ἀλλὰ πολιτεύματα καιρὸν ἐνιάυσιον ἔχοντα ἰσχύν. Dionyſ. 9. 37.

whom

whom he was defending, to treat a decree of the Senate with ſlight, declared it to be of no effect, *becauſe it had never been offered to the people, to be enacted into a law* [*r*]. In both which caſes, though the Conſuls and *Cicero* ſaid nothing, but what was agreeable to the nature of the thing, yet they ſaid it perhaps more ſtrongly and peremptorily, than they would otherwiſe have done, for the ſake of a private intereſt; the Conſuls, to ſave themſelves the trouble of executing a diſagreeable act; and *Cicero*, to do a preſent ſervice to a client, who was in great danger and diſtreſs. But on all occaſions indeed, the principal magiſtrates, both at home and abroad, ſeem to have paid more or leſs reſpect to the decrees of the Senate, as it happened to ſerve their particular intereſt, or inclination, or the party, which they

[*r*] Cic. pr. Cluentio. 49.

eſpouſed in the ſtate [*s*]. But in the laſt age of the Republic, when the uſurped powers of ſome of it's chiefs had placed them above the controul of every cuſtom or law, that obſtructed their ambitious views, we find the decrees of the Senate treated by them, and by all their creatures, with the utmoſt contempt [*t*]; whilſt they had a bribed and corrupted populace at their command, ready to grant them every thing, that they deſired, till they had utterly oppreſſed the public liberty.

[*s*] *Cicero* recommending the affairs of *Cærellia* to *P. Servilius*, when he was governor of *Aſia*, put him in mind, that there was a decree of the Senate ſubſiſting, which was favorable to her intereſt, and that he knew *Servilius* to be one of thoſe, who paid great regard to the authority of the Senate. Ep. Fam. 13. 72.

[*t*] Habet orationem talem Conſul, (Gabinius) qualem nunquam Catilina victor habuiſſet. errare homines, ſi etiam tum Senatum aliquid in Republ. poſſe, arbitrarentur. Cic. pr. Sext. 12.

SECT

SECT. VII.

Of the peculiar dignity, honors, and ornaments of a Roman Senator.

IT is natural to imagine, that the members of this ſupreme council, which held the reins of ſo mighty an empire, and regulated all it's tranſactions with foreign ſtates, and which in *it's floriſhing condition*, as *Cicero* ſays, *preſided over the whole earth* [*v*], muſt have been conſidered every where as perſons of the firſt eminence, which the world was then acquainted with. And we find accordingly, that many of them had even *Kings, cities, and whole nations*, under their particular patronage [*x*]. *Cicero* reciting the advantages of a Senator, above the other

[*v*] Qui quondam florens Orbi terrarum præſidebat. Phil. 2. 7.

[*x*] In ejus magiſtratus tutela Reges atque exteræ gentes ſemper fuerunt. [pr. Sext. 30.] Duæ maximæ

orders of the city, ſays, that he had *authority and ſplendor at home*; *fame and intereſt, in countries abroad* [*y*]: and on another occaſion, "what city "is there, ſays he, not onely in our "provinces, but in the remoteſt parts "of the earth, ever ſo powerfull and "free, or ever ſo rude and barbarous; "or what King is there, who is not "glad to invite and entertain a Sena-"tor of the Roman people in his "houſe [*z*]?"

It was from this order alone, that all embaſſadors were choſen and ſent to foreign ſtates: and when they had

maximæ Clientelæ tuæ, [Catonis] Cyprus Inſula, & Cappadociæ regnum, tecum de me loquentur: puto etiam Regem Deiotarum, qui tibi uni eſt maxime neceſſarius. [Cic. Ep. Fam. 15. 4.] Adſunt Segeſtani, Clientes tui. (P. Scipionis) [In Verr. 4. 36.] Marcelli, Siculorum Patroni. ib. 41.

[*y*] Auctoritas, domi ſplendor; apud exteras nationes, nomen & gratia. pr. Cluen. 56.

[*z*] Ecquæ civitas eſt, non in provinciis noſtris, verum in ultimis nationibus, aut tam potens, aut tam libera, aut etiam tam immanis ac barbara: Rex denique ecquis eſt, qui Senatorem populi Romani tecto ac domo non invitet? Cic. in Verr. 4. xi.

occaſion to travel abroad, even on their private affairs, they uſually obtained from the Senate the privilege of a *free legation*, as it was called; which gave them a right to be treated every where with the honors of an embaſſador, and to be furniſhed on the road with a certain proportion of proviſions and neceſſaries for themſelves and their attendants [*a*]: and as long as they reſided in the Roman provinces, the governors uſed to aſſign them a number of *lictors* or mace-bearers, to march before them in ſtate, as before the magiſtrates in *Rome* [*b*]. And if they had any law ſuit or cauſe of property depending in thoſe provinces, they

[*a*] Placitum eſt mihi, ut poſtularem legationem liberam mihi reliquiſque noſtris, ut aliqua cauſa proficiſcendi honeſta quæreretur. Cic. Ep. Fam. xi. 1. it. vid. Att. 15. xi. C. Anicius—negotiorum ſuorum cauſa, legatus eſt in Africam, legatione libera. Cic. Ep. Fam. 12. 21. Suet. in Tiber. 31.

[*b*] Idque a te peto, quod ipſe in provincia facere ſum ſolitus, non rogatus, ut omnibus Senatoribus Lictores darem. quod idem acceperam & cognoveram a ſummis viris factitatum. Cic. Ep. Fam. 12. 21.

ſeem to have had a right to require it to be remitted to *Rome* [*c*].

At home likewiſe they were diſtinguiſhed by peculiar honors and privileges: for at the public ſhews and plays, they had particular ſeats ſet apart and appropriated to them in the moſt commodious part of the theater [*d*]: and on all ſolemn feſtivals, when

[*c*] Illud præterea—feceris mihi pergratum—ſi eos, quum cum Senatore res eſt, Romam rejeceris. ib. 13. 26.

[*d*] Lentulus, Popillium, quod erat libertini filius in Senatum non legit. locum quidem Senatorium ludis, & cetera ornamenta reliquit. Cic. pr. Clu. 47. vid. it. Plutar. in Flaminin. p. 380. A.

But in the ſhews and games of the *Circus* they uſed to ſit promiſcuouſly with the other citizens, till the emperor *Claudius* aſſigned them peculiar ſeats there alſo. Suet. in Claud. 21.

The place where the Senators ſat in the theaters was called the *Orcheſtra*, which was below all the ſteps or common benches of the theaters, and on a level with that part of the ſtage, on which the Pantomimes performed. vid. Suet. Aug. 35. & in J. Cæſ. 39.

Æquales illic habitus, ſimileſque videbis
Orcheſtram & populum.— Juven. Sat. 3. 177.

In Orcheſtra autem Senatorum ſunt ſedibus loca deſtinata. Vitruv. l. 5. c. 6.

ſacrifices were offered to *Jupiter* by the magiſtrates, they had the ſole right of *feaſting publicly in the capitol*, in habits of ceremony, or ſuch as were proper to the offices, which they had born in the city [*e*].

They were diſtinguiſhed alſo from all the other citizens by the ornaments of their ordinary dreſs and habit, eſpecially by their *veſt or tunic*, and the faſhion of their ſhoes; of which the old writers make frequent mention. The peculiar ornament of their *tunic* was the *latus clavus*, as it was called, being *a broad ſtripe of purple*, ſewed upon the forepart of it, and running down the middle of the breaſt, which was the proper diſtinction between them and the Knights, who wore a

[*e*] Quoſdam (Senatores) ad excuſandi ſe verecundiam compulit: ſervavitque etiam excuſantibus inſigne veſtis, & ſpectandi in Orcheſtra, epulandique publice jus. [Suet. Aug. 35.] Ea ſimultus quum diu manſiſſet. & ſolemni die Jovi libaretur, atque ob id ſacrificium Senatus in Capitolio epularetur. A. Gell. 12. 8. Dio. 55. 554. C.

much

much narrower ſtripe of the ſame color, and in the ſame manner [*f*]. The faſhion alſo of their ſhoes was peculiar and different from that of the reſt of the city. *Cicero* ſpeaking of one *Aſinius*, who, in the general confuſion, occaſioned by *J. Cæſar*'s death, had intruded himſelf into the Senate, ſays, *that ſeeing the Senate houſe open after* Cæſar's *death, he changed his ſhoes, and became a Senator at once* [*g*]. This difference appeared in the color,

[*f*] Galli braccas depoſuerunt, latum clavum ſumpſerunt. [Suet. J. Cæſ. 80.] Anuli diſtinxere ordinem Equeſtrem a plebe—ſicut tunica ab anulis Senatum—quamquam & hoc ſero, vulgoque purpura latiore tunicæ uſos etiam invenimus Præcones. Plin. Hiſt. 33. 1.

Quid confert purpura major
Optandum ?— Juv. Sat. 1. 106.

Nam ut quiſque inſanus nigris medium impediit crus
Pellibus & latum demiſit pectore clavum.
Hor. S. 1. 6. 28.

Paterculus de Mæcenate, vixit anguſto clavo contentus. l. 2. 88.

[*g*] Eſt etiam Aſinius quidam Senator voluntarius, lectus ipſe a ſe. apertam Curiam vidit poſt Cæſaris

color, ſhape, and ornament of the ſhoes. The color of them was *black*, while others wore them of any color perhaps, agreeably to their ſeveral fancies. The form of them was ſomewhat like to a ſhort boot, reaching up *to the middle of the leg*, as they are ſometimes ſeen in ancient ſtatues and baſs reliefs: and the proper ornament of them was, the figure of an *half moon* ſewed or faſtened upon the forepart of them near the ancles [*b*]. *Plutarch*, in his Roman quæſtions, propoſes ſeveral reaſons of this emblematical figure [*i*]: yet other writers ſay, that it had no relation to the moon, as it's ſhape ſeemed to indicate, but was deſigned to expreſs the letter C, as the

ſaris necem. mutavit calceos: pater conſcriptus repente eſt factus. Cic. Phil. 13. 13.

[*b*] Adpoſitam nigræ lunam ſubtexit alutæ. Juv. 7. 192.

nigris medium impediit crus
Pellibus—— Hor. ſupr.

[*i*] Quæſt. Roman. 75.

numeral

numeral mark of *an hundred*, to denote the original number of the Senate, when it was firſt inſtituted by *Romulus* [*k*].

As to the gown, or upper robe of the Senators; I have not obſerved it to be deſcribed any where, as differing from that of the other citizens; except of ſuch of them onely, as were actual magiſtrates of the city, as the *Conſuls*, *Prætors*, *Ædiles*, *Tribuns*, &c. who, during the year of their magiſtracy, always wore the *Prætexta*, or a gown bordered round with a ſtripe of purple [*l*]: in which habit alſo, as I have ſignified above, all the reſt

[*k*] Zonar. 11. Iſidor. 19. 34.

[*l*] Cum vos veſtem mutandam cenſuiſſetis, cunctique mutaſſent, ille (Conſul Gabinius) unguentis oblitus, cum *toga prætexta*, quam omnes Prætores, Ædileſque abjecerant, irriſit ſqualorem meum. Cic. poſt. red. in Sen. 5.

Quod Tribuni plebis prætextam quoque geſtare ſolerent, a Cicerone indicatum eſt, qui Quintii Tribuni pl. *purpuram uſque ad talos demiſſam irridet*. [pro Cluen. 40.] quam quidem purpuram *Quintilianus*, de eodem *Quintio* loquens, *Prætextam* appellat. l. 5. 13. p. 275. Ed. Oxon.

of

of the Senate, who had already born thoſe offices, uſed to aſſiſt at the public feſtivals and ſolemnities [*m*].

[*m*] Neſcis heri quartum in Circo diem Ludorum Romanorum fuiſſe? te autem ipſum ad populum tuliſſe, ut quintus præterea dies Cæſari tribueretur? cur non ſumus prætextati? Cic. Phil. 2. 43.

Prætorio licet prætexta toga uti, Feſtis aut Solennibus diebus. Senec. Controv. l. 1. 8.

APPENDIX.

TO this deſcription of the Roman Senate, I have ſubjoined here, by way of Appendix, an extract or two, from *Cicero*'s letters and orations, which give a diſtinct account of ſome particular debates, and the intire tranſactions of ſeveral different days; and will illuſtrate and exemplify, what has been ſaid above, concerning the method of their procedings.

M. CICERO

M. CICERO *to his brother* QUINTUS.

Lib. ii. 1.

" THE Senate was fuller, than
" I thought it poſſible to have
" been, in the month of *December*,
" when the holydays were coming on
" [*n*]. There were preſent, of us
" Conſulars, beſides the two Conſuls
" elect, *P. Servilius*, *M. Lucullus*,
" *Lepidus*, *Volcatius*, *Glabrio*. All
" the Prætors. We were really full:
" two hundred at leaſt in all. *Lupus*
" had raiſed an expectation. He ſpoke
" indeed excedingly well on the af-
" fair of the *Campanian lands* [*o*]:
" was

[*n*] Theſe holydays were the *Saturnalia*, ſacred to Saturn, which laſted, as ſome ſay, five, or as others, ſeven days. But the two laſt were an addition to the ancient feſtival, and called *Sagillaria*.

Et jam Saturni quinque fuere dies. Mart. 4. 89.
Saturni ſeptem venerat ante dies. Id. 14. 7.

[*o*] *P. Rutilius Lupus* was one of the new Tribuns of the people, juſt entered into his office on the

" was heard with great ſilence. You
" know the nature of the ſubject. He
" ran over all my acts, without omit-
" ting one. There were ſome ſtings
" on *C. Cæſar*, abuſes on *Gellius*, ex-
" poſtulations with *Pompey*, in his
" abſence. He did not conclude till
" it was late: and then declared, that
" he would not aſk our opinions, leſt
" he might expoſe us to the incon-
" venience of any man's reſentment
" [*p*]: that from the reproaches, with
" which that affair had been treated
" before, and from the ſilence, with

the 10th of *December*, A. U. 696, by whoſe authority this meeting of the Senate appears to have been ſummoned, in order to reconſider the affair of the *Campanian lands*, and to repeal the law, which *J. Cæſar* had procured from the people about three years before, for a diviſion of thoſe lands to the poorer citizens; to the great diſguſt of the Senate, and all the honeſt part of the city. See Life of *Cic.* Vol. 1. p. 294, 428.

[*p*] The repeal of this law would have been greatly reſented by *J. Cæſar*, who was now commanding in *Gaul*: and more immediately by *Pompey*, who was now united with him in the league of the Triumvirate, and engaged to ſupport all his intereſts in *Rome*.

" which

" which he was now heard, he un-
" derſtood, what was the Senſe of the
" Senate: and ſo was going to diſ-
" miſs us. Upon which *Marcellinus*
" ſaid, You muſt not judge from our
" ſilence, *Lupus*, what it is, that we
" approve or diſapprove on this oc-
" caſion: for as to myſelf, (and the
" reſt, I believe, are of the ſame mind)
" I am ſilent upon it for this reaſon,
" becauſe I do not think it proper,
" that the caſe of the *Campanian*
" *lands* ſhould be debated in *Pompey's*
" abſence [*q*]. Then *Lupus* ſaid, that
" he detained the Senate no longer.
" But *Racilius* roſe up, and began to
" move the buſineſs of the trials [*r*]
" and

[*q*] *Pompey* was now in *Sardinia*, providing ſtore of corn for the uſe of the city, where there was great ſcarcity: which commiſſion had been decreed to him by the Senate at *Cicero*'s motion. See Life of *Cic.* Vol. 1. p. 407.

[*r*] *T. Annius Milo*, one of the late Tribunes whoſe office was juſt expired, had impeached *Clodius* in form, for the violences committed by him in the city, but *Clodius*, by faction and the help

" and aſked *Marcellinus* the firſt [*s*]. " Who, after heavy complaints on " the burnings, murthers, ſtonings " committed by *Clodius*, delivered his " opinion; that he himſelf, with the " aſſiſtance of the Prætor of the ci- " ty, ſhould make an allotment of " judges, and when that allotment " was made, that then the aſſemblies " of the people ſhould be held for the " elections. That if any one ſhould " obſtruct the trials, he ſhould be " deemed to act againſt the intereſt " of the Republic. This opinion was " greatly applauded. *C. Cato* ſpoke

e Conſul *Metellus*, found means to retard and ade any trial; and to ſkreen himſelf from that nger, was ſuing for the Ædileſhip of the next ar. *Milo* therefore, on his ſide, contrived by s Tribunitian power, to obſtruct any election, till *odius* ſhould be brought to a trial. This was the eſent ſtate of the affair, and the point in debate as, whether the trials or the elections ſhould be ld the firſt.

[*s*] *Cn. Cornelius Lentulus Marcellinus* was now nſul elect, and *L. Marcius Philippus*, mentioned ow, was his Collegue, who were to enter into ice on the firſt of *January*.

" againſt it: and *Caſſius* alſo, but with
" a great clamor of the Senate, when
" he declared himſelf for the aſſem-
" blies, preferably to the trials. *Phi-*
" *lippus* aſſented to *Lentulus*'s opini-
" on. *Racilius* afterwards aſked me
" the firſt of the private Senators. I
" ſpoke long, on all the madneſs and
" violences of *P. Clodius*, and accuſed
" him, as if he had been a criminal
" at the bar, with many and favora-
" ble murmurings of the whole Se-
" nate. *Vetus Antiſtius* ſaid much
" in praiſe of my ſpeech, nor indeed
" without ſome eloquence [*t*]. He
" eſpouſed the cauſe of the trials, and
" declared, that he would have them
" brought on the firſt. The houſe
" was going into that opinion: when
" *Clodius* being aſked [*v*], began to

[*t*] *Racilius*, *C. Cato*, *Caſſius*, *Antiſtius*, the chief ſpeakers in this debate, were all Tribuns of the people, and Collegues of *Lupus*.

[*v*] He was aſked probably by one of the Tribuns, *Cato* or *Caſſius*, who were on the ſame ſide of the quæſtion with him.

" was

" waſt the day in ſpeaking. He rav-
" ed, at his being ſo abuſively and
" roughly treated by *Racilius*, when
" on a ſudden, his mercenaries with-
" out doors raiſed an extraordinary
" clamor, from the Greek ſtation and
" the ſteps, incited, I ſuppoſe, againſt
" *Q. Sextilius* and the friends of *Mi-*
" *lo.* Upon this alarm, we broke up
" inſtantly in great diſguſt. You have
" the acts of one day: the reſt, I
" gueſs, will be put off to the month
" of *January*.

M. Tullius Cicero, *to* P. Lentulus, *Proconſul.*

Ep. Fam. i. 2.

" NOTHING was done in the
" Senate, on the *Ides of Ja-*
" *nuary:* becauſe a great part of the
" day was ſpent in an altercation, be-
" tween *Lentulus*, the Conſul, and
" *Caninius*, Tribun of the people. I
" ſpoke much alſo myſelf on that day,
" and ſeemed to make a great im-
" preſſion on the Senate, by remind-
" ing them of your affection to their
" order. The day following there-
" fore it was reſolved, that we ſhould
" deliver our opinions in ſhort [x].
" For

[x] This letter was written about a month after the former; ſoon after *Cn. Lentulus Marcellinus* and *L. Marcius Philippus* had entered upon the Conſulſhip. The quæſtion under debate was, in what manner they ſhould reſtore King *Ptolemy* to the throne of *Ægypt*, from which he had been driven by his ſubjects. *P. Lentulus Spinther*, to whom this letter

" For the inclination of the Senate
" appeared to be turned again in our
" favor: which I clearly ſaw, as well
" by the effect of my ſpeaking, as by
" applying to them ſingly, and aſking
" their opinions. Wherefore when
" *Bibulus*'s opinion was declared the
" firſt; that three embaſſadors ſhould
" carry back the King: *Hortenſius*'s
" the ſecond; that you ſhould carry
" him without an army: *Volcatius*'s
" the third; that *Pompey* ſhould car-
" ry him back: it was demanded, that
" *Bibulus*'s opinion ſhould be divided.
" As to what he ſaid, concerning the
" ſcruple of religion [*y*], to which no

" oppo-

is addreſſed, who had been Conſul the year before, and was now Proconſul of *Cilicia*, was very deſirous to be charged with the commiſſion of reſtoring the King: *Cicero* was warmly in his intereſt, and *Pompey* pretended to be ſo too: yet all *Pompey*'s friends were openly ſolliciting the commiſſion for *Pompey*.

[*y*] When this affair was firſt moved in the Senate, they ſeemed to be generally inclined to grant the commiſſion to *Lentulus*; and actually paſſed a decree in his favor: yet many of them afterwards, either out of envy to *Lentulus*, or a deſire of paying their

" oppoſition could then be made, it
" was agreed to by all: but as to the
" three embaſſadors, there was a great
" majority againſt it. *Hortenſius*'s o-
" pinion was next: when *Lupus*, Tri-
" bun of the people, becauſe he had
" made the motion in favor of *Pom-*
" *pey*, began to inſiſt, that it was his
" right to divide the houſe upon it,
" before

their court to *Pompey*, or a diſlike to the deſign it ſelf, of reſtoring the King at all, contrived ſeveral pretexts to obſtruct the effect of it: and above all, by producing certain verſes from the *Sibylline* books, forewarning the Roman people, *never to reſtore any King of Ægypt with an army*. *Bibulus*'s opinion related to theſe verſes, and upon their authority, declared it dangerous to the Republic, to ſend the King home with an army: and though this pretext was ſo ſilly in itſelf, and known to be ſo by all thoſe, who made uſe of it, yet the ſuperſtition of the populace, and their reverence for the *Sibyl*'s authority was ſo great, that no oppoſition could be made to it. The Senate embraced it therefore, as *Cicero* ſays, not from any ſcruple of religion, but malevolence to *Lentulus*, and the envy and diſguſt, which the ſcandalous bribery, practiſed by the King, had raiſed againſt him. See Ep. 1.

[z] The

" before the Conſuls [z]. There was
" a great and general outcry againſt
" his ſpeech; for it was both unrea-
" ſonable and unprecedented. The
" Conſuls neither allowed, nor great-
" ly oppoſed it: they had a mind,
" that the day ſhould be waſted:
" which was done accordingly. For
" they ſaw a great majority, ready
" to go into *Hortenſius*'s opinion, yet
" ſeemed outwardly to favor *Volca-*
" *tius*'s. Many were aſked, and a-
" gainſt the will of the Conſuls. For
" they were deſirous, that *Bibulus*'s
" opinion ſhould take place. This

[z] The opinion delivered in this debate in favor of *Pompey*, was firſt propoſed by *Volcatius*, a Conſular Senator; yet was eſpouſed afterwards by *Lucius*, Tribun of the people, and referred, or moved by him in form to the Senate, in order to be put to a vote, which was the peculiar right of the magiſtrates. But as to his diſpute with the Conſul about priority in dividing the houſe, it ſeems to have been ſtarted by him with no other view, but to waſt the day, as the Conſuls alſo deſired to do, in a fruitleſs altercation, ſo as to prevent *Hortenſius*'s opinion, which ſeemed likely to prevail, from being brought into debate.

" diſpute being kept up till night, the
" Senate was diſmiſſed, &c.

In one of *Cælius*'s letters to *Cicero*, we find the following decrees of the Senate tranſcribed in proper form, and ſent with the other news of the city to *Cicero*, when Proconſul of *Cilicia*.

" The authority of the decree of
" the Senate. On the 30th of *Sep-*
" *tember*, in the temple of *Apollo*,
" there were preſent at the engroſſ-
" ing of it, *L. Domitius*, the ſon of
" *Cn. Ahenobarbus*; *Q. Cæcilius*, the
" ſon of *Q. Metellus Pius Scipio*; *L.*
" *Villius*, the ſon of *Lucius Anna-*
" *lis*, of the *Pomptine* tribe: *C. Sep-*
" *timius*, the ſon of *Titus*; of the
" *Quirine* tribe: *C. Lucceius*, the ſon
" of *C. Hirrus*; of the *Pupinian*
" tribe: *C. Scribonius*, the ſon of *C.*
" *Curio*; of the *Popillian* tribe: *L.*
" *Atteius*, the ſon of *L. Capito*; of
" the *Anienſian* tribe: *M. Oppius*,
" the ſon of *Marcus*, of the *Terentina*
" tribe.

" tribe. Whereas *M. Marcellus*, the
" Conſul, propoſed the affair of the
" Conſular provinces, his opinion up-
" on it was this; that *L. Paullus* and
" *C. Marcellus*, Conſuls elect, ſhould
" after their entrance into their ma-
" giſtracy, refer the caſe of the Con-
" ſular provinces to the Senate, on the
" firſt of *March*, which was to be in
" their magiſtracy: and that no other
" buſineſs ſhould be moved by the
" Conſuls on that day before it, nor
" any jointly with it: and that for
" the ſake of this affair, they might
" hold the Senate, and make a decree
" on the *Comitial* days: and when-
" ever it ſhould be brought before the
" Senate, they might call away from
" the bench any of the three hundred,
" who were then judges: and if it
" was neceſſary, that any thing ſhould
" be enacted about it by the people
" or the Commons, that *Serv. Sulpi-
" cius* and *M. Marcellus*, the Conſuls,

" the

" the Prætors, the Tribuns, or any o
" them, who thought fit, ſhould la
" it before the people or the Com-
" mons: and whatever they omitted
" to refer to the people or the Com-
" mons, that the ſucceding magiſtrate
" ſhould refer it.

In *Cicero*'s firſt *Philippic* alſo, i
which he is reciting all their late tranſ-
actions in the Senate, from the time o
Cæſar's death, there is this paſſage.
" On that day, in which we were ſum-
" moned to the temple of *Tellus*,
" there laid a foundation of peace, a
" far as it was in my power, and re
" newed the old example of the *Athe-*
" *nians*, and made uſe of the ſam
" *Greek word*, which that city the
" uſed, in calming their civil diſſen-
" tions [*a*]: and gave my opinion,
" that all remembrance of our late diſ

[*a*] The Greek word, ἀμνησία, amneſty.

" cord

" cords ſhould be buried in eternal
" oblivion. *Antony*'s ſpeech on that
" occaſion was excellent * * *. He
" aboliſhed for ever out of the Repub-
" lic, the office of a Dictator, which
" had uſurped all the force of regal
" power. Upon which we did not ſo
" much as deliver our opinions. He
" brought with him in writing the
" decree, which he was deſirous to
" have us make upon it: which was
" no ſooner read, than we followed
" his authority with the utmoſt zeal;
" and gave him thanks for it by an-
" other decree in the ampleſt terms
" [*b*].

But on another occaſion, in his *third Philippic*, he reproaches *Antony for decreeing a ſupplication or public thankſgiving to M. Lepidus, by a diviſion only, or vote of the Senate, without aſking any one's opinion upon it:* which, in that caſe of a ſupplication, *had never*

[*b*] Phil. 1. 1.

ver been done before [*c*]. For it w
thought a mark of greater reſpect t
the General, in whoſe honor it w
granted, to give his friends an oppo
tunity of diſplaying his particul
praiſes and ſervices, in their ſpeech
on ſuch occaſions.

[*c*] Fugere feſtinans, Senatus conſultum de ſup
plicatione per diſceſſionem fecit: cum id factu
eſſet antea nunquam. Phil. 3. 9.

That the opinions of the particular Senators u
to be aſked, in the caſe of decreeing ſupplicatio
appears from Cic. Ep. Fam. 8. xi.

FINIS.